United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 75-4205

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

JACK LA LANNE MANAGEMENT CORP.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX - VOL. II
Pages 407 - 886

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FURTHER RECROSS EXAMINATION

Q. (By Mr. Monat) You finished at 10 to 9? A. The calisthenics class?

Q. Yes. A. Yes.

459 Q. So from 8 to -- A. Five to 9, depends on the size of the class.

Q. Did you walk around to see that the mirrors were clean after that? A. No.

Q. Did you look? A. Someone told me they were already done, I took their word for it.

Q. So whatever period of time you spent in calisthenics class you did not in fact observe what went on elsewhere; is that correct? A. I wasn't there at the same time I was teaching class.

MR. MONAT: Nothing further.

JUDGE MALLER: Thank you, Mrs. Antone, you are excused. We will recess for lunch until 2:10.

(Whereupon a luncheon recess was taken until 2:10 o'clock p. m.)

460 JUDGE MALLER: The hearing will be in order. You may call your next witness.

Whereupon,

RICHARD KAUFMAN

was called as a witness, and having been first duly sworn by Judge Maller, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) Will you state and spell your name, please, give your home address? A. Richard Kaufman, K-a-u-f-m-a-n, 58-07 205th Street, Bayside, New York.

Q. Mr. Kaufman, when did you begin working for Jack LaLanne? A. August, 1971.

Q. What was your job when you started? A. I was an instructor.

Q. What jobs have you held for them during the course of your employment? A. I have been a floor manager as well as an instructor.

Q. At the present time what job do you hold? A. Instructor.

Q. When were you a floor manager, just very briefly?

A. June, 1970 to about September, 1972.

JUDGE MALLER: Until when?

THE WITNESS: Approximately September, 1972, but on

461 occasion up until about February, '73 I was an acting floor manager and part time floor manager.

JUDGE MALLER: You say from June 1970?

THE WITNESS: June 1972. June, 1972 to September 1972 I was a full time floor manager and from September or so until about January, 1973 I was a part time floor manager.

Q. Is it fair to say that all the times you were there you were an instructor? A. Most, yes, the majority of the time.

Q. What do your duties involve as an instructor?

A. Taking members around on their exercise programs and cleaning up at night.

Q. Anything else? A. Well, I was giving co-ed calisthenics classes. I was the only male instructor to do that until January, 1974.

Q. Did you sign a card for Local 966? A. Yes, I did.

Q. When was that? A. June 5, 1973.

Q. Did you play any role in assisting the union other than signing a card? A. Yes, I did. I sat beside the union lawyer on the representation case in July.

462 Q. What were you doing sitting there? A. I was assisting him in the hearing.

Q. Did you do anything else in that hearing? A. I also testified at that hearing.

Q. On whose behalf? A. Our Local 966's behalf.

Q. Did you have any other participation with regard to assisting the union in organizing the employees? A. Yes, I did. I spoke to several employees personally and over the phone, got employees to sign member cards and was campaigning for the union.

Q. Did you go to other places other than the Douglaston gym? A. Yes, I did.

Q. From about September of '72 through June, '73, right before the union organizing campaign began will you tell us the hours you were working? A. I worked on Saturday from 10 o'clock in the morning until six at night.

On Sunday from 9 o'clock in the morning until one o'clock in the afternoon, on Monday night from 4:30 to ten, Tuesday night from 4:30 to ten, Wednesday night five o'clock to ten o'clock, and Thursday night 4:30 to ten o'clock.

Q. How many hours were you being paid for during that
463 period of time? A. 31 hours.

Q. That is per week? A. Yes.

Q. With regard to your hours wasn't there a lunch and dinner involved there where you were not paid? A. Yes.

Q. You were being paid for a total of 31 -- A. 31 hours.

Q. Did there come a time when after June, '73 that your hours were changed? A. Approximately July my hours were changed from 31.

JUDGE MALLER: July of what year?

THE WITNESS: July, 1973.

A. (Continuing) My hours changed from 31 hours a week that I had been working to 25 hours a week. Normally the Wednesday night I was working from 5 o'clock to 10 o'clock were taken away and the Monday, Tuesday, Thursday which I was working 4:30 to 10 was now changed from 5 o'clock to 9:30.

MR. MONAT: Can I have that read back?

(Whereupon the last answer was read by the reporter.)

Q. So at this time you were working how many hours after that? A. 25 hours a week.

464 Q. Who informed you of this reduction in your hours?

A. Frank Bieler who was a floor manager at that time of the Little Neck location.

JUDGE MALLER: Excuse me, are there two floor managers, one for men and one for women?

THE WITNESS: Yes.

JUDGE MALLER: Let me ask you this, they all use the same premises or there is segregation in the gym?

THE WITNESS: There is one main gym. On separate days the men would use it and separate days the women would use it and there's another part that is coed.

When it is coed only the men instructors are in the gym.

Q. While we are on that subject, in addition to the floor managers, are there also managers employed by the Douglaston spa? A. Yes, there are.

Q. How many at a time are there, managers? A. Mostly one, but there were times when there were two.

Q. What is the manager's job, very briefly now? A. The manager will oversee everything else in the health spa, the one that he is working.

Q. You mean he is in charge of both male and female? A. Yes.

465 Q. Did there come a time again when your hours were changed? A. Yes, about the middle of October the 25 hours I had been working were changed to 20 1/2 hours.

Q. Who informed you of that change? A. Andy Bostinto. He is the service supervisor. He oversaw like all the male employees of the company.

Q. Would that be at all locations? A. Yes.

Q. What time, what hours were taken away on that occasion? A. I had been working Monday evenings from 5 to 9:30 and that was taken away.

Q. When was this? A. Approximately October, 1973.

Q. Prior to June of '73, before the organizational campaign began and you signed a card for the union, were you teaching calisthenics classes? A. Yes, I was.

Q. Prior to June of '73 how many were you teaching on a weekly basis? A. I was teaching seven.

Q. I'm not sure you answered the question, how many calisthenics classes were you teaching prior to June of '73?

466 A. I was teaching seven calisthenics classes a week.

Q. When were those classes being given by you? A. On Saturday two calisthenics classes, one at 10 o'clock, one at 11:45.

On Sunday I gave two calisthenics classes, one at 10 o'clock and one 11:45, and also one at 9:30 on Sunday.

Tuesday I had given one at 7:45 and Thursday night at 8:30 in the evening, seven altogether.

Q. How did the members know of these classes? A. They have signs posted when each class is given and what type of class.

Q. Did the males have any calisthenics classes, only involving males? A. No, the only classes they had were coeducational classes. Just either for the women or the men and the women but not for the men alone.

Q. Beyond the summer that you taught on a weekly basis at this time through these coed classes, did women ever teach coed classes? A. Not -- on occasion, very rarely, but on occasion.

Was there any reason why you were particularly qualified to teach those classes? A. Well, I had been a physical education major in school and also I used to give classes like to different
467 teams and also I followed the muscles of the body. I was very interested in muscles of the body and the effects of them, the anatomy and so forth.

Q. How did you feel about teaching these classes.

MR. MONAT: Objection.

JUDGE MALLER: What is the purpose of that, Counselor?

MR. BLYER: The complaint alleges, Your Honor, that Mr. Kaufman was denied the right, the privilege of teaching calisthenics classes and given less agreeable job tasks. I think it is important to establish his feelings about these classes and I will remind Your Honor, if I may, the record will show that counsel for respondent

asked the witness how Paulette Anderson I believe felt about teaching certain classes, which was permitted.

JUDGE MALLER: It is harmless, I will let it go in, overruled.

Q. You can answer the question, how did you feel about teaching the calisthenics classes? A. I enjoyed teaching very much.

Q. Do you know how the members felt about those classes? A. Well, they enjoyed them very much.

Q. How do you know that? A. At the end of several classes there was applause. Many members used to ask me when I was giving the classes so they can come and attend them.

468 Also they told me that they liked it very much themselves.

Q. Were you ever told by anyone in management how members felt about the classes? A. Yes, I did. In February of 1973 Barry Curtis Greenfield was a manager at the spa I worked in Little Neck and he told me the people, the women used to come and say, "When are you giving these classes?" Because they all wanted to have more and they are too crowded, would I gave them more classes.

So I agreed. I said sure, any time you want me to give another class I definitely would.

So at that time I was giving four classes and increased them to seven. He wanted me to give two more classes during the week and an extra one on Sunday.

Q. Did you ever speak to anyone else in management regarding the calisthenics classes? A. Yes, Andy Bostinto used to work in the health food store that was adjacent to the Jack LaLanne Health Spa in Little Neck and he took one of my classes

one time and he enjoyed it, he says it is a great class and told me the reason why is, "you like to give them."

On occasion he told me that the people themselves would come to him and tell him how, you know, how well I conducted the classes.

469 JUDGE MALLER: Did the witness identify who Mr. Greenfield was?

MR. BLYER: Yes, he did, Your Honor.

Q. Tell us again. A. He was the manager at the Little Neck location at that time.

Q. How was the attendance at your calisthenics classes? A. It was often very crowded. I would have -- I was keeping a record and Andy Bostinto told me to keep a record at that time and I was averaging 40 to 50 people in every class.

Q. Did there come a time --

JUDGE MALLER: Where did you put these 40, 50 people?

THE WITNESS: Like wall to wall.

JUDGE MALLER: This wasn't what they call the ballet room?

THE WITNESS: Yes, very, very tight squeeze.

JUDGE MALLER: Any reason why they didn't give the classes in the big gym?

THE WITNESS: Well, the big gym has all the equipment and the ballet room is like an empty room so it is much more conducive for exercises.

Q. While you were giving calisthenics classes would the main gym be used for anything else? A. Yes, it is. The main

470 gym is being used for the people on their programs.

Q. Did there come a time sometime in July of '73 that your calisthenics classes, the number you taught, was changed? A. Yes,

it was. I had been giving seven previously and in July, I was now giving four. I was giving two on Saturday and wo on Sunday and during the week, the Tuesday night class and the Thursday night class were now given by girls.

Q. Who told you of this change? A. Frank Bieler who was the floor manager at the time.

JUDGE MALLER: Those were coeducation classes instructed by girls?

THE WITNESS: Right.

MR. MONAT: I presume there is no allegation here of course as to those incidents.

Am I to understand general counsel is offering this as relevant background material.

MR. BLYER: Yes, Mr. Monat, that is correct. This July '73 change in the number of calisthenics classes that Mr. Kaufman underwent is outside the 10B period and we are offering it for background only. It also pertains to his testimony with regard to his first change in the number of hours from 31 to 25. That too was at a period outside the 10B.

471 MR. MONAT: Is it General Counsel's position that those reductions were because of union activity nevertheless?

MR. BLYER: We are introducing this in evidence as relevant background. We think such an inference is reasonable, yes.

I would add that if it was, if these incidents occurred within the 10B period they would have been included as unfair labor practices. I think that answers your question.

Q. I think you may have answered this but just to clarify matters, what days now are you teaching your four calisthenics classes? A. On Saturday and Sunday only.

Q. Did you make any inquiries or complaints when you were told that your classes were being reduced from seven to four?
A. No.

Q. Thereafter, on November 5, 1973 did you take part in an unfair labor practice case in this building? A. Yes, I did. I testified at that hearing.

Q. On behalf of whom? A. Local 966.

Q. On December 12, and 13 did you play any role with regard
472 to the election that was held involving this employer? A. Yes, I did. I observed on both evenings.

Q. Let us start with December 12th, where did you observe?
A. I observed at Lefrak City and 55th and Madison gym.

Q. How about the 13th? A. On the 13th I observed at the 86th Street Third Avenue Jack LaLanne and the 55th and Madison gyms.

Q. You acted as observer on behalf of the union? A. Yes.

Q. Who else acted as observers on behalf of the union?
A MR. MONAT: Objection, Your Honor, only because I think we ought to have a list of all observers and when and where.

Previously in a phone call with Mr. Blyer you suggested we get that from election service or whatever we have in the R case and make a list and put it in evidence and I would like that suggestion be done rather than just testimony as to who the observers were.

JUDGE MALLER: You can do it either way.

MR. MONAT: Because there were ten polling places and two days, elections were different hours and different people at each time.

MR. BLYER: I think this witness is competent to answer the question.

JUDGE MALLER: He can answer it.

473 Q. Go ahead, you can answer the question. Who else were observers other than yourself on behalf of the union at the various locations on December 12th and December 13th? A. Paulette Anderson, Debbie Caron, Janice Rigney and also Phil Mattinelli were supposed to be observers at the election but Phil couldn't make it at the last minute.

Q. So the actual fact as far as you can recall is there were only you, Anderson, Caron and Rigney as observers? A. Yes.

Q. Where was Janice Rigney normally employed?
A. At Woodmere.

Q. Is she still working for the company? A. No, she isn't.

Q. Do you know approximately when she left? A. Approximately in March of 1974.

Q. About two weeks after the election, approximately, do you recall another change in your schedule regarding your calisthenics classes? A. Yes, approximately two weeks after the election Steve Wolf told me he would be no longer giving any calisthenics classes and that he was told of this by Andy Bostinto. He said Andy Bostinto

474 wanted Ray Ramos to give the calisthenics classes from then on.

Q. What position did Mr. Ramos have at that time? A. He was a floor manager.

Q. With regard to the hours you now were not teaching calisthenics classes on Saturdays and Sundays and Mr. Ramos was now teaching, what did you do those hours? A. I was working the main gym taking members through their programs and showing them how to exercise.

Q. At that time? A. And also use the machines.

Q. At that time who was teaching the classes? A. First Ray, Ramos was immediately after.

Q. Let us stop there for the time being.

Did you observe Mr. Ramos working at the spa before he began to give these calisthenics on Saturday and Sunday?

A. Yes, I did.

Q. Had he ever given calisthenics classes before?

A. Not at the Little Neck branch.

Q. Did you ever see him give them elsewhere? A. No.

Q. Was there anything that you were doing on Saturday and Sunday these hours that you formerly had calisthenics classes that Mr. Ramos could not do? A. No.

475 Q. Or had not done? A. No, no.

Q. Did there come a time when Mr. Ramos ceased giving these calisthenics classes? A. Yes.

Q. Will you tell us as best you can in chronological order who followed Mr. Ramos with regard to teaching these calisthenics classes? A. After Ray Ramos a fellow by the name of Rob Gianguzzi. He followed, he came from Lefrak City to give the calisthenics classes.

Q. What was his position? A. Assistant floor manager.

Q. At what location? A. First at Lefrak City, then at Little Neck.

Q. Who was next? A. Steve Wolf.

Q. What was his position at the time he gave these classes?

A. The floor manager of the Little Neck gym.

Q. After Mr. Wolf? A. Mike Marciano.

Q. What was his position at the time he gave those classes?

A. Instructor.

476 Q. Who was next? A. Joseph Guarino.

Q. What was his position at the time he was giving the classes? A. Assistant floor manager.

Q. Who was next? A. Phil Mattinelli.

Q. And his position at the time? A. Instructor Little Neck gym.

Q. Was there anyone else? A. Yes, Al Romeo.

Q. His position at the time? A. Instructor.

I just want to say that Al Romeo had given one this past Sunday.

MR. BLYER: Could we have that read back?

(Whereupon the last answer was read by the reporter.)

Q. Was there anything else to that answer? A. No, I just wanted to make it clear.

Q. Do you recall an incident in late February, 1974 involving Mr. Ray Ramos who at that time was teaching the calisthenics classes that you formerly taught? A. Would you repeat the question, please?

Q. Do you recall an incident in late February, 1974 regarding Mr. Ray Ramos and the calisthenics classes that you were

477 formerly teaching, also involving Mr. Glenn Tausek? A. Oh, yes, at about around that time on a Sunday Glenn Tausek who was an assistant floor manager, he and I were working on Sunday morning and normally Ray Ramos would give the calisthenics classes.

On this particular morning it was about a quarter to 10 and the class was supposed to start 9:30. No one was around. So what they did was they asked Glenn.

JUDGE MALLER: Who is they?

THE WITNESS: Ernie Gross.

Q. Before we get into that, were you listening to this conversation between Ernie and Glenn? A. No.

Q. What happened? Who taught the calisthenics class that morning? A. Well, what happened was Glenn came back and asked me if I would be willing to give the calisthenics class. He said he had refused to. I said definitely I would.

So he went back in the room and he came back out and I was just still on the gym floor and by 10 o'clock Robbie Anguisi who worked at Lefrak City, they called him over to give the class at Little Neck.

Q. Where was he at that time? A. He was at Lefrak City.

Q. At any time did you ever tell management and by that
478 I mean anyone who represented management, assistant floor manager, floor managers and above, that you were unwilling to teach these calisthenics classes? A. No, the only one I spoke to was Glenn Tausek who was the assistant floor manager. He asked me if I would give it and I told him I would give the calisthenics class.

478a Q. Was there any time after your calisthenics classes were taken away that you were again asked to give a class? A. Yes, sometime in March, the beginning of March Steve Wolf had left early on a Tuesday.

I don't remember exactly what date it was, and a fellow by the name of Pete Trainor was in charge that evening.

I believe he was either a floor manager in the Brooklyn Gyms and since Steve Wolf wasn't around there was nobody to give the 7:45 class that evening.

I think the girl was sick also, and all the instructors had been asked to give the class and all refused to give it, so he came over and asked me if I would give it that night and I said I would.

So I gave the class and the people applauded. He came back out of the gym floor and later on that night at about 9:30 we had a small meeting of all instructors and John Wilton, who was the manager at the time on the location, said to me, he says, "Kaufman please, whatever you do don't give any classes when I'm here because I don't want to lose my job."

Q. Did you say anything to Mr. Wolf? A. I just told him I wouldn't any more.

MR. MONAT: Could we have that read back?

We are just kind of running into meetings.

479 JUDGE MALLER: Please read it back.

(Whereupon the last answer was read by the Reporter.)

JUDGE MALLER: Who was it that asked you to take the class?

THE WITNESS: Yes, Pete Trainor. He wasn't from the Little Neck Gym, he was from the Brooklyn Spa. He was taking over that night.

Q. Was anyone else present during this conversation between you and Mr. Wilton? A. Philip Vainelli and also Larry Moskowitz.

Q. About the same time your calisthenics classes were taken away approximately two weeks after the election did you have another change in your working hours? A. Yes, I did. I had been working twenty and a half hours and they were now reduced to sixteen hours a week.

Q. Who told you about that reduction? A. Steve Wolf.

Q. What was taken away on this occasion? A. He told me I would be no longer working on Thursday evenings from 5 to 9:30.

Q. At about this time at the end of December or early January when your calisthenics classes were taken away do you

remember a number of members circulating a petition in the club?
A. Yes, I did.

480 Q. Will you tell us about that? A. Two members, a husband an wife, wanted to get my classes back and they found that a number of people thought --

MR. MONAT: Objection. I move to strike that, Your Honor.

JUDGE MALLER: That might be stricken.

Q. Just tell us about the petition and its being circulated? A. They were passing around a petition to get my classes back, see what they could do to get my classes back.

Q. Did anyone make any inquires of you regarding that particula petition? A. Well, after they had several signatures they asked me if I would get them Harry Schwartz' home address because they told me that they thought if he had gotten it possibly something might have been able to done about it.

Q. Did you do anything based upon that request? A. Yes, I did. I asked some members and some employees if they knew, you know, what his address was but I was unsuccessful.

Q. Do you remember on what day of the week this occurred? A. Sunday.

Q. The following Tuesday do you remember speaking to

481 Mr. Ray Ramos? A. Yes, I normally come to work about 5 o'clock or so and after I started working he told me that Harry Schwartz wanted to see me in his office.

Q. What was Mr. Ramos' job at the time, do you know? A. He was a floor manager.

Q. What happened after he told you Mr. Schwartz wanted to see you?

JUDGE MALLER: What was Mr. Schwartz' position, do you know?

THE WITNESS: He owns the company. I guess he is the president of Jack LaLanne.

Q. Go ahead. A. I walked into the room and he asked me how I was. He said to sit down.

He asked me, "Do you like working here?"

I said I did.

JUDGE MALLER: I lost you. Would you read that question, please.

(Whereupon the pertinent portion of the record was read by the Reporter.)

A. (Continuing) He said would I like to continue working here and I said I did.

He mentioned the fact that I was looking for his home address
482 and asked me if I was looking for it to -- maybe he thought maybe it might be an apology I might be sending him.

So I told him that it was a petition that people were taking around to get my calisthenics classes back and they figured if "They had your address they would make sure you received it and if there was something you could do that you would do it."

She said to me, he said, "If I received that petition," he said, "It will give me grounds to fire you and I don't want to do that."

He told me that people shouldn't tell management what to do and that if I wasn't giving the calisthenics classes since they were taken away from me, he said that I should tell the people that I was either on the gym floor and not to incite them.

Q. Go on. What did Mr. Schwartz then say? A. He also said what happened last year happened last year that he may never forget it but he said that if I did my job I wouldn't have to worry.

He also said that he and Gabriel were disappointed at Paulette and I when we were on the witness stand and saying cutting my hours at the previous trial. I imagine he was talking about that --

MR. MONAT: I object.

JUDGE MALLER: Well, that part may be stricken.

483 MR. BLYER: Can I have the last sentence read back?

(Whereupon the pertinent portion of the record was read by the Reporter.)

Q. What was next said as you recall the conversation, Mr. Kaufman? A. He said that Paulette was such a nice sweet girl and I was once one of his favorites. He said that if, you know, someone had done something like that, he said, that -- he said that if it happened someone who didn't like working for the company or someone who wasn't a good worker, he could understand.

But he said that since it was me, I was one of his favorites, you know, he was very surprised.

Just getting back, I just remember now, when he was talking about the hours, when I was talking about -- he said to me -- I was talking about my hours being cut, he said that he had told Andy Bostinto who was the area supervisor, service supervisor to give me all the hours he could while I was going to school and that I had carte blanche of hours. He used that French phrase, and said that, you know, I could have had anything at that time.

Q. Do you remember anything else being said by either you or Mr. Schwartz during that conversation? A. No.

484 Q. How did the conversation end? A. He just said that will be all, "You can go back to work."

Q. With regard to that particular petition, was it ever presented, if you know, to Mr. Schwartz? A. No, it never was.

Q. Do you know what happened to it? A. People gave it to me.

Q. About a month or so later, around early March of '74, were your hours again changed? A. Yes, I had been working 16 hours a week now and they were down to 9 and 1/2 hours a week.

Q. What was taken away on this occasion? A. I was no longer working Sunday mornings from 9 o'clock to 1 o'clock and Saturdays I was only working now to 3 o'clock instead of 6 o'clock.

Q. Who informed you of this change? A. Steve Wolf.

Q. Mr. Kaufman, do you know who took over as manager of the Douglaston Spa after John Wilton? A. Yes, Dennis, I believe, Karf.

Q. On June 18th, a Tuesday, do you recall a conversation with Mr. Karf? A. Yes, when I first came into the gym.

When I first walked into the lobby I met him. I shook his hand. He knew me from before.

485 He said hello. He said, "You are a great instructor, I look forward to working with you."

Then I went to the gym as I normally do about ten after 5, 5, and I started working.

About 5:25 he came over to me while I was in the gym and said to me, "What have they done to you besides cutting your hours?"

He said, "Have they been harassing you since the union business?"

So I told him that the only cut in my hours, I have been down to 9 and a half and I wasn't teaching any calisthenics classes.

I said that is about it. He said, "Well, it is not that bad."

Q. Was that the extent of the conversation? A. That particular evening, yes.

Q. Tuesday, two days later, on the 20th of June, a Thursday, did you again have a conversation with Mr. Karf? A. Yes, I did. I was working out in the Little Neck Gym on my own time that evening at about 7:45, while I was in the gym, in the main gym, he came over to me and said to me, "Let us forget about this union vendetta.

He goes, "From now on if we need you in an emergency situation we will give you more hours."

486 He said that instead of calling people in from other gyms, he said this, "We have you here, we will give you, you know, the hours."

He also said that he had first asked Barry Flickstein if he could do such a thing.

Q. Who is Mr. Flickstein? A. He is an area supervisor.

MR. MONAT: Your Honor, I find I must interrupt at this point.

MR. BLYER: Let the witness finish the answer.

MR. MONAT: My objection is on the grounds that we have had a whole series of new names, alleged managers involved here. We have had absolutely no notice as to any of this and I object to the procedure because of the lack of notice.

MR. BLYER: Your Honor, none of these supervisors or agents of the respondent are alleged to have committed any unfair labor practices.

Any supervisor or agent who has committed an unfair labor practice Mr. Monat has known about.

These are just conversations which we think of course are very relevant, but they don't relate to any commission of unfair labor practices, and as I understand it, we were not asked nor I think would be obliged to go through all our case and provide him

with all the names of all the supervisors involved in all these various
487 conversations.

MR. MONAT: Your Honor, I don't agree at all and may I say something in that respect?

In the initial Complaint in this case Anita Katz and Steven Wolf were the alleged supervisors. It is right in the pretrial conference where I said to your administrative law judge, Arthur Leff that I would like to know exactly what it is that Katz and Wolf did in this case.

Are they alleged to have done any unfair labor practices, because if not I don't think it was appropriate to name them. What are they alleged to have done?

At that time it was told to me that it might be relevant to some of the other areas under that just unfair labor practices.

I submit that just like Steven Wolf and Anita Katz these other supervisors are engaged in matters which are not necessarily unfair labor practices but like who was assigned the work, who tell them what to do and with respect to doing it and we should have been put on notice.

Now, you have got a list and I can't even remember all these names, of assistant floor managers, managers and so on.

Just because somebody calls them assistant floor managers or
488 floor managers doesn't mean they are. It is clear that he is raising new supervisory issues, some of which I may agree, some of which I may not. I have had no chance at all to talk to almost all these people mentioned.

Some of them I have never heard of and I don't think it is a fair procedure.

JUDGE MALLER: Well, unless the mention of these floor managers and assistant floor managers relate to their

commission of unfair labor practice they don't have to be alleged in the complaint.

I gather the evidence is being offered in the nature of omissions by floor managers and or assistant floor managers to demonstrate that earlier unfair labor practices on the part of the respondent.

If it is offered for that purposes it is competent.

MR. MONAT: Your Honor, I think it should be taken subject to General Counsel's establishing it in fact all these people were supervisors and agents and I'm not prepared to proceed right now that they all were, particular in view of what I claim is lack of notice.

JUDGE MALLER: Let me ask you specifically, the decision and order and direction of election were you Exhibit 3 in evidence.

This specifically holds that floor managers and assistant
489 floor managers are supervisors within the meaning of the Act.

MR. MONAT: Yes, sir.

JUDGE MALLER: And they were excluded from the persons eligible to vote.

MR. MONAT: Yes, sir.

JUDGE MALLER: Do you have any question on that?

MR. MONAT: If a person is indeed a floor manager or an assistant floor manager they are a supervisor, but I must point something out.

One, we have an issue as to Joan Holand. It is true that she was at one time a floor manager and I would say she certainly was a supervisor, but the question is when.

I say that question may exist as to some of these other people as well. I may point out to you to show you what it is not always

that simple and that there was a time when General Counsel in the prior case which he introduced in evidence, at the beginning or noted for your reference, I believe, they claim that an individual named Mr. Horowich who had the title of assistant floor manager was in fact not a supervisor within the meaning of the act.

In that case we contend that he was and we prevailed.

What I am saying to you is it depends on the particular time involved. I don't know right now if I could say that on the dates

490 involved in the question in instance they were in fact supervisors under 2.11 of the act.

JUDGE MALLER: Well now, as part of the posture of this case as concerned this witness has identified certain people as being at the time he spoke to them either manager or floor manager.

You have access to the company records and you can tell from the company records whether they were or were not supervisors at the time these conversations took place.

All the witness can do is state his understanding of their position at the time he talked to them.

Now, you may rebut that by bringing in evidence as at a particular time the conversations occurred they were not supervisors.

MR. MONAT: I think it is improper in the present state of this case to just presume because he thought they were assistant floor managers or floor managers that they were in fact supervisors at that time.

I don't think the record at present establishes that and I don't think it can be presumed.

It may be that further inquiry will mean I can yes, they were all supervisors or some of them were and I can clarify dates, but

on the present state of the record I submit the burden is General Counsel's and before these statements, this testimony is actually

491 permitted to be evidenced, it has got to be established as to what they were in fact supervisors.

This must be established in some way and it is not on the present state of the record even given the R case decision.

MR. BLYER: Your Honor, may I add this one point?

Despite all the names that he mentioned, and I know there have been plenty, there aren't that many that are crucial to our case and I don't think there is going to be any difference of opinion on that.

Pursuant to your request I will be glad to sit down with Mr. Monat when he has the books and records before the close of our case which will not be today and to go over the names of these various people and I think that there won't be, I don't think there will be any evidence necessary other than on the Joan Holand issue which I think we already covered.

JUDGE MALLER: If it should develop that your search of the respondent's records when you go over it with Mr. Monat, if it should develop that at a particular time this witness has testified to a conversation with an alleged supervisor he would not be a supervisor, then that evidence, of course, will not be binding on the respondent. In that event I will disregard it.

492 I think your suggestion of going over the records with Mr. Monat before you close your case is a good one.

I think you can clear the matter up very simply that way.

MR. MONAT: Your Honor, I will be glad to discuss this with Mr. Blyer and the records may well show and may give me information and to Mr. Blyer.

I don't know that I'm just going to open all the company's records at this point.

MR. BLYER: I am not asking you to do that.

MR. MONAT: I think maybe we can arrive at some agreement on some of these matters.

My point is I find that I am indeed not prepared at this time to respond to all of this, not at all.

JUDGE MALLER: Well, I can understand that. I can also understand before the counsel closes his case, as I said before, if you go over such records as you are willing to disclose of the supervisory status and should it appear from those records that a person who had a conversation, alleged conversation with this witness was not a supervisor then, of course, I cannot consider the witness' testimony of that conversation as admission on the part of the respondent if the person was not a supervisor.

I think that is fairly clear.

You may proceed.

493 Q. You were in the middle of telling us of a conversation on the 20th of June between yourself and Dennis Karf.

MR. BLYER: With his Honor's permission should I have the reporter locate if that would be easier or should I ask him to begin again?

JUDGE MALLER: If you can locate it without too much trouble I would appreciate.

(Whereupon the pertinent portion of the record was read by the Reporter.)

Q. Could you continue from there, Mr. Kaufman? A. Yes, after he said he would clear it with Barry Flickstein he said that if Barry Schwartz found out about it that he and Barry Flickstein would take the responsibility and I said, you know, fine.

He said to me -- I told him that I had, you know, another job right now also. I told him where it was and we just started talking and that was the end of the conversation.

JUDGE MALLER: You said you had another job? You mean an additional job?

THE WITNESS: Yes.

Q. From the time that your hours were reduced to nine and a half through this conversation which you dated June 20th with Mr.
494 Karf, have you ever been offered more than nine and a half hours a week work? A. Never.

JUDGE MALLER: Excuse me, I assume you are hourly paid?

THE WITNESS: Yes.

Q. During that same period of time had you ever worked more than nine and a half hours a week to your best recollection? A. Never.

Q. Since the conversation with Mr. Karf which was on the 20th, do you recall a conversation four days later on the 24th with Mr. Wolf? A. Yes, I did.

At 6:45, it was a Monday evening, I had a call from Steve Wolf and he asked me if I could work the following day which was Tuesday, during the day because Joseph Guirino was ill.

So I told him that I couldn't work during the day but I could be there at night because I have, you know, the other job.

Q. Was that the extent of the conversation? A. Yes.

Q. Do you recall another conversation with Mr. Wolf a few days later? A. Yes, the 27th, June 27th, which was the
495 Thursday following that Steve Wold asked me if I could work until 4:30 on Saturday, and from that Saturday every other Saturday, so I told him that I wasn't sure if I could work that particular

Saturday until 4:30 because I had to go somewhere by car, but everyone after that I would, so I ended up working a little earlier that day.

I worked from 9:30 to 4:30 that Saturday and the following two Saturdays after that and ever since I have been working a little bit later on Saturdays.

JUDGE MALLER: How many hours are you getting in now?

THE WITNESS: Well, this past Tuesday night, July 16th, Steve Wolf asked me if I could work Thursday from now on, Thursday nights, so after this week it should be fifteen and a half hours a week.

Q. What has been the difference since before that?

A. Well --

Q. How many hours have you worked in the two or three weeks in between? A. Eleven hours.

Q. Did you have a conversation with Mr. Wolf again on July 2nd? A. Yes, on July 2nd, I was working that night and he asked me if -- that was a Tuesday night, he asked me if I could work

496 the following day, afternoon or night since this fellow Joe Giarino was still out. He had that walking pneumonia and I told him that, you know, I would have to have a little more advance notice. The earliest I could be there was 3:30, and that he should maybe ask Phil Mattinelli first to see if he could do it.

Q. Did you work this following Wednesday? A. No, I didn't.

Q. Would you tell us, did you have another conversation with Mr. Wolf on July 9th? A. Yes, the following week the same situation was still there since Joseph Guarino still -- he was ill, but came in for about a half a day and the following day he wasn't

going to come in Wednesday, so he is taking off the rest of the week, so Steve Wolf again asked me if I could work the following day and I told him I still couldn't.

Q. Did you work the following day? A. No, I didn't.

Q. You also did have a conversation with Mr. Wolf on the 16th of July? A. Yes, this past Tuesday.

MR. MONAT: I object, Your Honor. It is not relevant.

JUDGE MALLER: I don't know in advance whether it is or not.

MR. MONAT: The events are remote from the alleged unfair labor practices in question.

497 JUDGE MALLER: The unfair labor practices may continue I don't know. Overruled.

MR. MONAT: If there are allegations as to any further unfair labor practices I ask I be notified at this time.

MR. BLYER: Your Honor, this evidence is being introduced not to prove any new unfair labor practices.

JUDGE MALLER: Very well.

MR. BLYER: But we certainly think it has a great deal of relevance.

JUDGE MALLER: You may proceed.

Q. Will you please tell us about the conversation you had with Mr. Wolf on the 16th of July? A. Yes, Tuesday, since I came home late from the hearing I called up and told him I wasn't sure I would be coming in because I was kind of tired from the whole day.

He told me he needed me and he also asked me if I could work Thursdays from now on so I told him, you know -- he said from 5 to 9:30, so I told him that this week I would be coming home late again today and following I would have to let him know.

I told him I would let him know by Monday if I could do it or not.

That would mean an increase of another four and a half hours a week.

498 Q. Was there any discussion at that time about membership drive? A. Yes, he said that he was going to be very busy since there was a new promotion, a two for one deal and they tried to get, you know, more people to come down and get members to join the Spa.

Q. Can you give us a little bit more information on this two for one deal? What is that exactly? A. It is one six month membership that you pay for and the person receives that can get another six month membership free that he can give to anybody else, so actually it is two six month memberships for the price of one.

Q. When is this offer being made? A. It just started recently, as of Sunday, July 14th, I believe.

Q. Were you also familiar with a membership drive held in the summer of 1973? A. Yes, on December 15th as a matter of fact it started, 1973.

Each year they have the time of the year when they send each member of Jack LaLanne's a free one month guest pass which, in essence, means they bring somebody down for a period of one month and at the end of, you know, January 31st no other members would be allowed to bring that one month guest, so between the months

499 of December 15th and January of '74 we had a contest also among ourselves.

Each person that joined from that one month guest card, it was $2 put into a big kit like for the instructors and instructors for each one that renewed their membership.

Q. Mr. Kaufman, let us talk about this December, '73 membership drive.

First of all, how long was this offer made?

MR. MONAT: Your Honor, I object. I seem to recall having objected and having disposed of this issue yesterday when we were not going to go into it.

MR. BLYER: Your Honor, I'm on a different point. I intend not to all explore the amount of money that Mr. Kaufman was paid or anyone else.

JUDGE MALLER: Very well, overruled.

Q. What period of time was this membership drive for, the one that began in December, '73? A. From December 15th 1973 to January 31st, 1974.

Q. Who was sent these passes so that one fan can come into the spa for a month free of charge? A. Each and every member of all the Jack LaLanne's.

Q. Well, let us just talk about Douglaston.

How long have you been there? A. Three years, just about three years.

500 Q. You have access also to a catalog which lists the number of members, both active and inactive in the spa? A. Approximately.

Q. I asked you if you had access to it. Do you see it?

A. Yes, this is the program cards I guess that you are referring to. Each member that comes in, that comes up to the gym we fill out a card, take his measurements.

Q. Would you have seen both the active and inactive file?

A. Yes.

Q. To your best estimation how many male members does the Douglaston Spa have?

MR. MONAT: I object.

JUDGE MALLER: What is the objection?

MR. MONAT: I don't think it is appropriate testimony to estimate the number based on his access to filing cards.

JUDGE MALLER: Overruled.

A. I would say approximately about 2,500.

Q. Do you know who gets these one month passes for guests?

A. Every member.

Q. Do you know how they are distributed? A. Yes, they are sent through the mail.

Q. During this period from December 15, of '73 through January 31st of '74 can you tell us how this membership drive affected the number of people coming to use the main gym on a regular basis --

501 MR. MONAT: I object.

MR. BLYER: Let me finish the question and the witness will give you time.

Q. (Continuing) -- on a regular basis -- I forgot the end of the question. That is the end of the question at this time.

MR. MONAT: I thought it was.

MR. BLYER: No, there was more but I don't remember.

MR. MONAT: Your Honor, I object. I submit that the question is to his own memory as to how many people were coming and not how many membership cards went out. It is not relevant at all.

If we send out two million cards maybe nobody came. I don't think it is relevant actually how many came or who came.

MR. BLYER: I think it is relevant, Your Honor. We have had Miss Anderson and Mr. Kaufman during this period of time having their hours reduced.

JUDGE MALLER: The objection is overruled.

A. Well, just a normal, you know, just during the week crowd it is very crowded at night at Jack LaLanne's.

Each of these people who come, some of them bring members and some of them don't. Some of them bring guests and some of them don't.

502 If you figure even half of them brought guests and several people used their cards it would be, let us say a room like this, as many here now with half the people bringing guests, it would be packed.

MR. MONAT: I object, it is speculation.

JUDGE MALLER: What is your experience? Was there more people?

THE WITNESS: Many more people.

JUDGE MALLER: In January than in December?

THE WITNESS: The end of December with this and the beginning of January, the middle of January was packed. Everybody want to get their one month memberships in.

JUDGE MALLER: Very well.

Q. When is the busiest time of day at the Douglaston Spa?

A. During the week the busiest part of the evening is about 7 o'clock on. It really gets very crowded. All the people in the city come home, eat dinner and come there at 7:30.

There were times when the members couldn't get lockers it was so crowded.

Q. Was that always the case, the busiest time of the day at Douglaston? A. It is busy 7:30 on until closing, from 7:30 to 8:30 evenings are the busiest times and on weekends Sunday morning would be the busiest.

JUDGE MALLER: Off the record.

503 (Discussion off the record.)

JUDGE MALLER: On the record.

Q. Mr. Kaufman, based on your experience is there a busier time of the year at one time rather than another? A. I would say the months during the summer like July and August are usually the slowest because you usually have the most people on vacation and most people go away in the summer, they don't use the spa.

Q. What about the rest of the year? A. Generally pretty crowded straight through the year.

Q. Could you tell us the number of members who come down to the gym on a regular basis?

MR. MONAT: I object.

JUDGE MALLER: Well, if he knows he may answer.

A. Well, Barry Curtis the manager in 1973, the beginning of the year had mentioned the fact that ten percent of all the members of the Jack LaLanne used the spa 90 percent of the time approximately, so you would find I would say approximately there are about 5,000 members, paying members in Little Neck, so I say about 500 or so used the club all the time, 500 out of the 2,000, 90 percent of the time.

Q. Generally how many would be using the main gym area? A. I would say approximately -- at one time?

504 Q. Yes, at one time on a consistent basis? A. Well, that varies but I would say between let us say the peak of 7:30 or so there must be 200 people at least upstairs in the gym.

Q. How many employees would be -- talking about instructors now, would be working at that time? A. Well, usually -- you are talking about presently?

Q. Yes. A. Presently there are only three I think or four.

Q. During let us say the fall through the winter and spring what you said was -- A. About six, seven.

Q. Would they be full time or part time? A. Both.

MR. BLYER: Thank you very much, Mr. Kaufman, I have no further questions. Thank you very much.

JUDGE MALLER: You may cross-examine.

CROSS EXAMINATION

Q. (By Mr. Monat) Mr. Kaufman, I presume you gave an affidavit to Mr. Blyer? A. Yes, I did, to this case.

* * * * *

506 MR. MONAT: * * * What I ask now is that when General Counsel rests I be given a months' adjournment to August 19th.

507 General Counsel has indicated to me he is agreeable to that, that in fact he himself is tied up with a trial beginning next Tuesday.

* * * * *

508 MR. BLYER: I believe that with some luck we will be finished tomorrow with General Counsel's case.

However, I would point out that we do have one or two, especially one witness who we have attempted to obtain through subpoena and who is a critical witness in our case.

I don't think that person will be here tomorrow.

We may have to seek subpoena enforcement, I'm not sure

509 at this time, but nonetheless I think we might be in a position to where we either may rest our case or at least get very close to the finish of it tomorrow.

* * * * *

JUDGE MALLER: Well, I will take the request for adjourn-
510 ment under advisement. I will rule on it tomorrow. You may proceed with your cross-examination.

Q. (By Mr. Monat) Mr. Kaufman, were you, to your knowledge, the first individual at the Little Neck Spa to contact Local 966? A. Yes.

Q. Do you recall how that contact came about? A. Yes, actually it started out sometime the beginning of January where a friend of mine who was working out at the Spa brought down a friend of his who eventually joined and one evening --

Q. Who was that friend? A. Who he brought down?

Q. Yes. A. Glen McCarthy.

Q. He is a union official? A. Yes.

Q. And you got to talking with Mr. McCarthy? A. Yes.

Q. Due to certain conversations you had with him it led you to sign a card for the union; is that right? A. Actually what happened was I brought him over to Frank and introduced him to Frank Bieler who was then the floor manager and I spoke to a couple of other employees and we agreed to meet on the night of June 5th, six of us in the back of the parking lot.

511 Q. Frank Bieler became a union supporter, did he not? A. Well, he was considered a supervisor so he really couldn't get involvement in that.

Q. Did Mr. Bieler give out any cards? A. No, but he signed one.

Q. Excuse me? A. He signed one.

Q. He did sign one? A. Yes.

Q. Do you recall if he gave out any? A. I don't know if he gave out any but I know he was there when other people signed.

Q. He was one of the guys who supported the union, wasn't he? A. Well, until he was told otherwise.

MR. MONAT: I move to strike that, Your Honor.

JUDGE MALLER: You may strike the last remark.

Q. In fact at that time back in June or July, wasn't Steve Wolf one of the union supporters? A. Yes.

Q. At that time you did not know, back in June, what an R case referred to did you? A. No.

Q. Do you recall when you first learned about what an R
512 case was? A. When I went to it in July.

Q. That was at the hearings? A. Yes.

Q. Do you recall Mr. Drogan? A. Yes, I do.

Q. Ira Drogan? A. Yes, I do.

Q. Do you recall who he is? A. He was an attorney representing Local 966 at the hearings.

* * * * *

514 Q. Mr. Kaufman, would you agree that you are not the type of fellow who would hesitate to speak up when you have something to say? A. Well, it depends when and where and to who.

Q. Let us talk about union matters. Did you ever hesitate in any way to bring up union matters when you spoke to Mr. McCarthy? A. No.

Q. You wouldn't be afraid to speak up to him and tell him what has been going on and so on? A. Right.

Q. Likewise if you were speaking to Mr. Drogan you would be reluctant would you? A. No.

Q. You spent a substantial amount of time with Mr. Drogan preparing for the R case, didn't you? A. Not really, not a considerable

amount of time. I say just the days that I was there and before, before the actual case.

In other words, if I was there at 10 o'clock I was with him at 9 o'clock.

Q. Your hours were cut from 31 down to 25 before you testified,
515 isn't that correct, before you testified in the R case? A. Right.

Q. Isn't it true that you never questioned anyone why those hours were reduced? A. No.

JUDGE MALLER: It is not true?

THE WITNESS: No, it is true, I didn't question.

Q. Weren't the hours of Bob Cash and Phil Mattinelli also reduced in October when you went from 26 1/2 hours to 20 1/2 hours? A. Yes, I should make a correction.

Q. Isn't that true? A. Yes, it is 25 hours.

Q. Bob Cash was an instructor? A. Yes.

Q. Part time? A. Part time.

Q. And Phil Mattinelli likewise? A. Yes.

Q. Isn't it also true that you don't recall anything about the time when you were reduced from 20 1/2 hours to 16 1/2? A. Well, at the time I made the statement it was again late at night and a lot of things --

Q. Mr. Kaufman, can you just answer the question?
516 Can we have it read back?

JUDGE MALLER: Read the question, please.

(Whereupon the last question was read by the reporter.)

JUDGE MALLER: What do you mean you don't recall anything? I don't follow that.

MR. MONAT: You want me to rephrase that question?

JUDGE MALLER: Please.

A. Isn't it true that you don't recall what was said to you at the time you were reduced from 20 1/2 to 16 1/2 hours? A. At the time I made the statement I didn't.

Q. Would you tell me --

JUDGE MALLER: Wait a minute. I don't understand the answer. The time you made what statement?

THE WITNESS: The statement to Sid Rosen of the Labor Board.

JUDGE MALLER: That time you didn't what?

THE WITNESS: I didn't recall it because it was so much that he was asking me and it was a couple of months later.

Q. So as of April 11th I believe you gave your statement, do you recall that as of that time you didn't recall the circumstances surrounding the reduction from 20 1/2 to 16? A. Right, my mind wasn't clear and I didn't, you know, wasn't thinking too much about that.

517 MR. BLYER: Your Honor, I just didn't want the record to get too balled up and I don't think Mr. Monat would have any objection, but it is not from 20 1/2 to 16 1/2 I don't think, it is from --

JUDGE MALLER: I know 20 1/2 to 16, my notes show from 20 1/2 to 16.

MR. BLYER: I think that s correct, and also the other numbers that he used were incorrect.

JUDGE MALLER: 25 to 20 1/2.

Q. So the record is clear on that point, you did give a statement which you swore to and signed to Mr. Rosen on April 11th? A. Right.

Q. And in that statement you did indicate they were reduced from 20 1/2 to 16 1/2? A. Right.

Q. Did you ever tell anybody what Harry Schwartz, what you claim Harry Schwartz said to you when you were in his office? A. Yes, I did.

Q. Did you tell Paulette Anderson? A. Yes, I did.

Q. Did you tell anyone else? A. I believe I mentioned it to Phil Mattinelli as well.

518 Q. Anyone else? A. Bits and pieces to people but I don't, you know, nothing really of any consequence.

Q. Will you try and think if there was anyone else? A. Prior to my immediate family?

Q. Don't recall that at the end of your conversation with Mr. Schwartz that he said to you that, "Look, anything that happened, it is all water under the bridge." A. In those exact words? I don't understand.

Q. You described us on your direct testimony a conversation in Mr. Schwartz' office when Mr. Ramos told you to go in; you remember your testimony on that? A. Yes.

Q. I'm talking about that conversation with Mr. Schwartz. A. Okay.

Q. Isn't it true that at the end of that conversation Mr. Schwartz said to you that anything that happened as far as he is concerned is water under the bridge? A. The only reference --

Q. Is that true, yes or no? A. No, no.

Q. Isn't it a fact that he said words to that effect? A. In the beginning when he said, "That is done, is done and I may never forget it, but if you do your job you don't have to worry."

519 Those were the only words I would say were similar to that what you are saying.

Q. Those are the words you can remember? A. That were similar, those kinds of words.

Q. You don't remember at the end he said it is all water under the bridge? A. I would remember that.

Q. You don't remember that? A. No.

Q. You say he didn't say it? A. No.

JUDGE MALLER: He did not say it?

THE WITNESS: No, he did not say it.

Q. Did you ever tell anyone that he did say that? A. I don't believe so.

Q. You recall that back in October, November, December, January the corporate headquarters and offices were located in the same building as the Little Neck Spa? A. Yes.

Q. In fact as you walked in you made a left and walked into the offices? A. Right.

Q. That is where Mr. Schwartz had his office, Tom Sansone had his office, Peter Sandor had his office?

JUDGE MALLER: Who are these people?

MR. MONAT: These are company officials.

520 Q. And all the clerical and secretarial work was done there.

Had you ever learned of Mr. Schwartz' address prior to the time that a customer asked you for the address? A. No.

Q. Had you ever heard it before? A. I believe I heard it mentioned in the R case.

Q. Did you take notes? A. No.

Q. Did you know where he lived? A. I believe it was in Atlantic Beach.

Q. Did you suggest to the member who asked you that he could look in the phone book or anything like that? A. I told him I don't think definitely as far as I was concerned, I didn't think it was in there.

Q. You didn't think that Harry Schwartz would let him know what his address was? A. Right.

* * * * *

JUDGE MALLER: What is the relevance of all of this?

MR. MONAT: Well, I think it is leading up to a point. I just can't open it up and lay it all on the table at once. It is a

521 buildup of many months and many factors going to this man's credibility.

JUDGE MALLER: Credibility on an irrelevant matter is of no consequence to me.

Q. Isn't it true that you don't recall if your classes were cut from seven to four before or after you testified in the R case? A. Right, I'm not sure.

Q. Who do you recall asking for Mr. Schwartz' address? A. As far as who, the people or the employees?

Q. The employees. A. Well, I asked Glenn Tausek to ask Andy if he might know where it was, indirectly.

Q. What do you mean indirectly? A. Well, I told him if he could, you know, ask him for Harry Schwartz' address without telling him I wanted it.

Q. What did Tausek say?

JUDGE MALLER: Counsel, I told you I was not interested in Harry Schwartz' address. The whole matter is related to a petition which somebody wanted could send to Harry Schwartz. It is not an unfair labor practice and I see nothing relevant about it.

MR. MONAT: There is something relevant, Your Honor, and I will point it out.

522 This individual has testified that there was reference in Mr. Schwartz' alleged statements to him about this petition and the address and so on.

I think it goes to that and the reasons, if any, that Mr. Schwartz may have made any statements he did.

JUDGE MALLER: Mr. Schwartz' statement about the fact that if he got the petition he would discharge this witness is not alleged to be an unfair labor practice.

Am I correct?

MR. BLYER: That is correct, Your Honor.

JUDGE MALLER: So I don't see that it has any relevance. He is not being charged with an unfair labor practice about that.

MR. MONAT: As part and parcel in that conversation, that conversation is introduced for some relevant purpose. Obviously it is supposed to be behind what happened previously and after that conversation.

JUDGE MALLER: It goes to indicate and it is offered I assume for the purpose of indicating Mr. Schwartz' attitude and any reason he may have given for his actions toward the witness.

But the matter of the petition and his address, whether this witness found out his address is of absolutely no relevance.

MR. MONAT: I am suggesting that the matter in which Mr.
523 Schwartz may have spoken with Mr. Kaufman was prompted by the manner in which Mr. Kaufman went about obtaining the address.

JUDGE MALLER: That would relate only to the petition.

MR. MONAT: It would relate to Mr. Schwartz' motive.

JUDGE MALLER: I can't see that at all.

You may make an offer of proof in writing tomorrow on the point.

Q. Isn't it true that you made no complaints about the cuts in your calisthenics classes? A. Correct.

Q. And the cut in about, you say was December or January -- A. Two weeks, about two weeks following the election, approximately.

Q. It was Steve Wolf who told you? A. Yes.

Q. Do you recall what you said to Steve? A. Well, at that point after we lost the election I figured that just being there was plenty.

MR. MONAT: May I have that stricken, Your Honor.

JUDGE MALLER: Not responsive.

Read the question, please.

(Whereupon, the last question was read by the reporter.)

524 JUDGE MALLER: Do you remember what you said to Steve? That is the question.

THE WITNESS: Not specific words but I would imagine in the inference of, well, that is all, it is not bad, something to that effect.

Q. Just tell me as best you recall what you said. We realize you are not quoting necessarily but just tell us what you remember saying. A. Nothing really major. Just a going along.

JUDGE MALLER: I don't understand that. Just what did you say?

THE WITNESS: Well, I took it for what it was. He said that from now on Ray will be giving classes and Andy wanted Ray to give classes from now on.

So I said well, what am I going to do?

Q. Didn't you also say well, that is less work for me? A. I might have mentioned it later on.

Q. Either then or shortly thereafter you did say that or you might have said it? A. Right.

* * * * *

525 Q. Didn't you understand when you spoke to Mr. Schwartz that he was very upset about the fact that you were asking around for his address? A. Yes.

Q. Didn't you also understand that Harry was upset about the idea of members petitioning and telling him what to do?

A. Can you repeat that question, the first part?

Q. Didn't you also understand when you were speaking to Harry that he was upset about the idea that there were members petitioning and trying to tell him what to do? A. I believe I said that he did tell me that.

Q. Did you understand that? A. No.

Q. At the time you were cut to 9 1/2 hours weren't part

526 time instructors --

MR. BLYER: Excuse me, Your Honor. Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Q. Isn't it true that at the time of the cut in your hours to 9 1/2 part time instructors, Larry Moskowitz and Phil Mattinelli were also cut? A. Yes.

Q. Do you also recall that Larry Moskowitz' employment was terminated? A. Yes.

Q. Did you inform the union about your cuts in hours at any time? A. Just the first few. One I believe in July and one in October.

* * * * *

(Whereupon the last question and the answer thereto were read by the reporter.)

Q. Don't you recall that your calisthenics classes did not end suddenly but kind of phased out? A. What do you mean by phased out? They went from four to nothing.

Q. You are saying it went in one week from four to nothing?

527 A. Yes.

Q. Did you ever have any occasion to do any calisthenics classes after that time? A. Yes.

Q. When? A. Once.

Q. Once? When was that? A. Approximately March.

Q. Is that the only time? A. Yes.

Q. Wouldn't you agree that Ray Ramos was a good man at calisthenics classes? A. Well, he used to watch my classes. I imagine he must be good.

Q. Would you agree that Ray Ramos was a good man at calisthenics classes? A. I never seen any of his classes.

Q. Didn't he give any calisthenics classes while you were there? A. Yes.

Q. You didn't bother to watch? A. No need to.

Q. Do you recall if before you started giving calisthenics classes there was anyone else giving them? A. Yes.

528 Q. Who was? A. Arthur Singer.

Q. Isn't it true that there was this period of time where you did almost all the coed classes? A. I believe at that time it was all of them.

Q. And in fact there was nobody else around at that time who really could cover for you in case you were absent? A. You mean in what way, to take over the class?

Q. If Richie Kaufman was out there might be problems in terms of getting someone else to do the calisthenics classes? A. I don't think I missed more than maybe four, five days.

Q. But on those days? A. No classes, there were no classes.

* * * * *

Q. Didn't Ray Ramos start doing the calisthenics classes when you stopped? A. Yes.

Q. And there were a number of other people who also did
529 after you stopped? A. Yes.

Q. So that it became a situation where there were more people who were available to do that kind of class; isn't that right? A. Yes.

Q. Did you know that Paulette Anderson also liked doing calisthenics classes? A. Yes.

Q. Did Frank Bieler inform you when you went down to 25 hours; is that right? A. Yes.

Q. What did he say to you at that time?

JUDGE MALLER: Went down to 25 hours?

MR. MONAT: I think it was up to 31 initially.

JUDGE MALLER: You mean in July, '73?

THE WITNESS: Right.

Q. What did he say to you when he told you that you were going down to 25 hours? A. He said from now on this will be a new schedule and you will be working 25 hours.

Q. Did he say anything else? A. No.

Q. Prior to your working 31 hours how many hours were you
530 working? A. Approximately 45.

Q. And when Andy Bostinto spoke to you in mid-October what did he say to you? A. He called me into his office on a Sunday morning and told me that starting this week I wouldn't be working Monday nights.

Q. Did he say anything else? A. No. As a matter of fact --

Q. Did he say anything else? A. No.

Q. Wouldn't you agree that the manager of a spa has, as one of his principal duties, sales promotions? A. Definitely.

Q. Bringing customers into the spa? A. Definitely.

Q. Something called walk-ins which are new customers and you try to show them around and have them sign up and so on? A. Yes.

Q. When they come in it could be any night of the week? A. Correct.

Q. Because that would have been a primary function of John Wilton when he was manager at Little Neck? A. Correct.

Q. How long did your calisthenics classes last in periods
531 of time? A. A weekend -- there were two classes, one on Saturday and one on Sunday, 11:45 to about 12:30, and the rest of them lasted approximately a half-hour.

Q. Just so the record is clear you handle coed classes; is that correct? A. Yes, calisthenics classes.

Q. You didn't handle any -- there were no all male classes. A. There was one time when we tried that, one time I think way back and I gave that class, but the women complained so they made it coed again.

* * * * *

532 Q. Is it your testimony that Bob Gianguzzi was an instructor when he gave calisthenics classes or a floor manager? A. I thought he was -- to the best of my knowledge he was an assistant floor manager.

Q. What about Mike Marciano? A. Definitely was instructor.

533 JUDGE MALLER: Definitely what?

THE WITNESS: An instructor.

Q. And Joe Guarino? A. Assistant floor manager.

Q. And Phil Mattinelli was an instructor? A. Yes.

Q. Al Romeo an instructor? A. Yes, and still is.

Q. Was Al Romeo working at Little Neck at the time he gave the calisthenics classes? A. Yes.

Q. What about Phil Mattinelli? A. Yes.

Q. And Joe Guarino? A. Yes.

Q. What about Mike Marciano? A. Yes.

Q. And Steve Wolf? A. Yes.

Q. And Bob Gianguzzi? A. Yes.

Q. And Ray Ramos? A. Yes.

Q. Do you recall Bruce Evans? A. Yes, I do.

534 Q. Do you recall any occasion where he asked you to do a calisthenics course, an extra one? A. Yes.

Q. Do you recall when that was? A. Yes.

Q. The date? A. Approximately some time -- well, I can give you -- October sometime, I think November.

Q. Do you recall what he said to you? A. Well, do you want the whole instance?

Q. I just asked me if I could, you know, do him a favor and give a calisthenics class.

Q. Did he say why? A. Yes, he had sent Paulette home, Paulette Anderson home that day early. He sent her because she came late and sent her home and there was nobody left to give them during the day.

Q. He said he had sent her home because she came late that day? A. Yes.

Q. He said he had nobody else to give it? A. Right.

Q. Do you recall what you said to him? A. I said

535 there are other instructors in the gym and also that, you know, I would be glad to give it as a favor to him.

In other words, I told him he didn't have to ask other people, I would do it for him.

Q. You agreed to do it? A. Yes, I did.

Q. But you indicated there were other instructors who could have done it as well? A. Also I mentioned the fact he could call a girl, you know, to bring somebody else to give the classes, and that I would do this as a personal favor to him.

Q. So at that point you did not particularly like doing calisthenics classes? A. Well, I didn't feel it was right for me to give the class that day because, you know, Paulette was sent home and I would burden the people who were in the gym because I would be leaving, taking my place out of there and leaving only two instructors in there.

Q. So you burdened -- A. Burdened the other instructors and I felt it unfair to them.

Q. But you had suggested that they take one of the other instructors who were there? A. Well, I said that is what he would have to do. That was the only ultimatum if he said he wasn't going

536 to call in a girl.

Q. Wasn't taking one of the other instructors also causing a burden? A. Exactly.

Q. You mentioned an incident where Pete Trainor to your knowledge asked a lot of instructors to do calisthenics classes and they refused; is that correct? A. Yes, that is correct.

Q. What is the source of your knowledge that the other instructors refused? A. He had told me the other two instructors, I belive it was Bob Cash and Phil Mattinelli and probably Larry Moskowitz had been on and they didn't want to give the classes so then he came to me.

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537

16 Court Street,
Brooklyn, New York,
July 19, 1974.

* * * * *

542 JUDGE MALLER: * * * Your personal engagement or the obligations of your client will just have to be subordinated to that of the Board here.

MR. MONAT: Well, may I have a moment to consult with my client, Your Honor?

JUDGE MALLER: Go ahead.

Do you have any further comment, Mr. Monat?

MR. MONAT: Yes, Your Honor.

We will do all humanly possible to abide by your order.

JUDGE MALLER: Very well.

That will be the understanding.

Are there any other preliminary matters?

MR. BLYER: No, Your Honor.

JUDGE MALLER: If not, then Mr. Kaufman, will you please resume the stand.

543 You are still under oath, Mr. Kaufman. A. Yes, 1974.

Q. Isn't it true that you never gave an affidavit as to these events? A. Correct.

Q. Now, weren't there two different situations with guest cards that were given out in December? A. In what way?

Q. Well, tell us what you recall about the kinds of guest cards that were given out in December of '73. A. In December of 1973?

Q. Yes. A. Through the mail, each member that was enrolled at Jack LaLanne's received one-month guest pass that they can give to any one of their friends.

Q. And that guess pass was only given to members who were enrolled from November through December 31st, is that correct? A. No.

That's all members.

Q. You say it was all members? A. Yes.

Q. What's the source of your knowledge? A. Well, all the members that came in said they received this in the mail.

544 Q. So you don't agree with the statement that guest passes were only given to members who enrolled between the beginning of November and December 31st? A. Well, they were also given guest passes.

In other words, if members had been already members were given these passes through the mail, those who joined in November were handed to them at the end of -- you know, when they joined.

As soon as they signed the contract, they were given the pass.

Q. Now, when you spoke to Mr. Schwartz, the conversation you described yesterday in his office -- A. Yes.

Q. -- you and he were along.

Is that correct? A. Yes.

Q. You knew at that time, of course, about filing charges with the NLRB that that could be done? A. Yes.

Q. You have been through a number of NLRB proceedings by that time? A. Well, I had attended the one in November.

Q. And the one in the summer? A. Well, that was something else.

That was an R case.

545 Q. But that was an NLRB matter, was it not? A. Yes.

Q. And you had become associated with Mr. Rosen and Mr. Forman? A. Yes.

Q. Both NLRB agents? A. Correct.

Q. Now, tell me again, if you please, what Harry Schwartz said to you in terms of your hours being cut? A. Well, he mentioned the whole fact that, first, he and Gabrielle were disappointed that Paulette and I were on the witness stand and about my hours being cut.

And then he told me that he hadn't --

Q. What do you mean about your hours being cut?

He said -- he said he was disappointed in your being on the witness stand and about your hours being cut? A. That he was disappointed, and then he had just gone on, like, a period or a semicolon, and said, any my hours are being cut.

And then he went to explain further.

Q. What did he explain further? A. He said he had instructed Andy Bostino to give me all the hours, you know, I could work, the carte blanche of hours used while I was going to school.

546 Q. And? A. And that was as far as he went with hours.

Q. Can you think of anything else he said on hours?

A. Well, just that I could have had all of the hours I

wanted to work, which he instructed Andy Bostinto while I was going to school.

Q. Who else? A. That's all I can remember.

Q. Just tell me everything you can remember about what he said about hours.

Just state it again. A. Okay.

Shall I start with the previous statement, the one with --

Q. Anything that he said -- A. Okay.

Q. -- about hours. A. He said that he and Gabrielle were disappointed that Paulette and myself when we were on the witness stand, and about my hours being cut.

He said that he had -- he said that he had instructed Andy Bostinto to give me all of the hours I could have worked, a carte blanche of hours while I was going to school, until I finished with school.

Q. Was it your -- strike that.

547 Q. What else did he say? A. Starting from the beginning?

Q. Yes. A. Well, when I first walked in, he said, you know, how are you?

And he said, "Do you like working for the company?

He said, "Do you want to continue on working for the company?"

I said, "I do."

He goes, "Why were you asking for my home address?"

He said, "I thought maybe it might be that you were sending me an apology."

He said that he had heard his uncle had overheard me asking for his address in the lockerroom.

So I explained to him that the people in the gym were asking for his home address because they had made up a petition to try

to get my classes back and they wanted him to receive it so that he might be able to do something about it.

I told him that -- he told me -- excuse me.

He told me about people, they couldn't tell the management what to do.

He felt that if I had my classes taken away, that I should tell the people that I was needed in the gym floor, not to incite them.

548 Shall I go on?

Q. Is that it? A. No.

Okay.

I'll just on on.

He also said that I -- this is where he went into the part when he said that what happened last year happened last year and I may never forget it but if you do your work, you don't have to worry.

And getting back one point I just left out, he told me that if he had received the petitions, that that would give him reason to fire me and that he didn't want to do that.

And then he went into the point where he and Gabrielle were disappointed in Paulette and I when we were in the witness stand and that about my hours being cut.

He said that he instructed Andy Bostinto to give me all of the hours that I could work, a carte blanche of hours, until I was finished with school.

He said that Paulette was such a nice, sweet girl and I had been one of his favorites.

He said what happened was he couldn't understand -- he couldn't see, he said, if it was someone who didn't like to work there

549 or someone who didn't do a good job, he could see it.

But he was very surprised it was me.

Q. Are you going to just sit there and tell us that Harry Schwartz, the president and owner of the company sat there and told you that he was disappointed that you and Paulette Anderson had testified? A. That's what he said.

Q. Did you tell the union about that? A. No.

Q. Did you go to the NLRB about that? A. No.

Q. What did you expect to make up to Mr. Schwartz?

JUDGE MALLER? I'm sorry, I didn't get that.

Q. (By Mr. Monat) What did you expect to make up to Mr. Schwartz? A. Well, when he said to me what happened last year happened last year and that I wouldn't have to worry about it as long as I did my job, I figured that if I was doing my job, you know, the way -- the best way I could, you know, that things would be all right.

Q. So by making up, you mean you were going to do your job from then on as best you could? A. Right, as I was usually doing it.

Q. As you usually do it? A. Yes.

550 Q. You were just going to continue to do then what you had always done? A. Right.

Q. Now, wouldn't it be fair to say that you had an intense dislike for the company back in October of 1973? A. Not that I ever disliked the company.

Q. Well, wouldn't it be fair that you had an intense dislike for Mr. Schwartz in October 1973? A. No.

Q. Wouldn't it be fair to say that you were extremely hostile to this company throughout the union organizational campaign? A. Well, let me put it this way:

We didn't see eye-to-eye on matters.

Q. Wouldn't that be fair to say? A. I was hostile?

Q. Yes. A. How would you explain "hostile."

Q. Would you describe it as merely a difference of opinion? A. Yes.

Q. Nothing more than that? A. Right, correct.

Q. Is it your testimony that you continued to conduct yourself in the exact same manner on your job in October 1973

551 and thereafter as you had prior to that time? A. Correct, and even more so.

Q. And even more so? A. Correct.

Q. What did you do better? A. Everything.

Just a little bit better to make sure that I wouldn't slip off and give him any reason for letting me go.

Q. Well, e.g., what did you do?

What were the improvements in your conduct? A. Well, I made sure I started -- instead of starting on time, I started a little bit earlier.

Q. What time did you start? A. Well, instead of coming 5:00 o'clock, I would come there ten to.

Q. Did you make sure you signed out on time all the time? A. Well, there was an instance where it was brought to my attention, they had given -- the new thing was warning sheets.

They had pointed out that three times I had not signed out properly.

JUDGE MALLER: In what respect?

THE WITNESS: There are sign-in sheets and next to it sign-out sheets.

552 Let's say it would say Richard Kaufman signed in at 5:00 o'clock and then there would be nothing signed out after me.

JUDGE MALLER: You mean you hadn't signed out at all?

THE WITNESS: Right.

And previously before that, if you signed out, the floor manager would sign you out.

And on that particular day where they showed me the warning, like, there were three different sheets that I didn't sign out, there were different handwritings on the other people, the same, 9:30, 9:30, and mine was left out; and whoever filled them in, didn't fill out mine.

Q. (By Mr. Monat) So it was your opinion that everyone else's was filled in except yours? A. Correct.

Q. And that no employees filled them in? A. Well, if they did, I would say there were two or three that were also --

Q. Are you a handwriting expert? A. No, but I can see with my own eyes.

Q. So it was your opinion that they were just leaving your name out and put everyone else's name in? A. Not that they put it

553 in. If someone did omit it, they signed them out.

Q. Weren't there other signatures on there, as well? A. Yes.

Q. And you didn't sign yours, did you? A. No.

JUDGE MALLER: Now, when did this occur?

THE WITNESS: I'd say sometime around, I think the end of November.

JUDGE MALLER: Of?

THE WITNESS: '73.

JUDGE MALLER: Thank you.

Q. (By Mr. Monat) Now, in what respects specifically did you improve your conduct on the job? A. Well, I'd make sure I was -- well, let me put it this way:

I was always doing an excellent job of taking the members around, the guests around, helping them join up.

Now, I was taking even people, you know, on their program, I would make sure I corrected them, every exercise, regardless.

I would be running around the gym like a maniac.

Q. So you felt that there was reasons for you to have to do better? A. I felt that I didn't want to leave myself open --

554 Q. Isn't that right? A. -- for any kind of, you know, petty things that were happening like these warning sheets.

Q. And you felt you had to do better because you didn't see eye-to-eye with Harry Schwartz? A. The policy of Jack LaLanne's, not Harry Schwartz, you know.

Q. Harry Schwartz would not be the policy-maker of Jack LaLanne? A. Well, let me put it this way:

It's, you know, the rules and regulations of the company.

If he made them up, it would be him.

But these would be the rules and regulations.

Q. Well, come on, Mr. Kaufman, you know that Harry Schwartz makes the policy of the company, don't you? A. I believe he does.

Q. Isn't it your understanding that it was his decision whatever happened in that company? A. Not all the time.

Q. Any policy decisions? A. Well, there was one time where Andy Bostinto was -- he was the service supervisor for that reason because Harry Schwartz can't be at 11 places at one time, so he was making decisions as to who to give hours to, how many

555 people to put on.

So I believe that there are, you know, a few people making policies in the company.

Q. So you felt that because of a few people who made policies that you had to do better than you had done in the past? A. I don't understand that question.

Q. Tell us again, Mr. Kaufman, why you felt you had to do better? A. Well, plus I had to show -- I was trying to show that I didn't want, you know, say just because of the union activity, that my work should diminish in any way.

Q. So you would say it was not the same for you in your work after October but you had to do better.

Now how long did that continue where you felt you had to do better? A. Oh, continuously.

Q. Right to the present time? A. Yes, sir.

Q. So you would say there's been a real pickup in your work since October? A. I believe so.

Q. Would it be fair to say that you hate this company? A. No, it wouldn't be fair.

556 Q. Would it be fair to say that you feel any animosity? A. No, if I did, I wouldn't be there.

* * * * *

558 MR. MONAT: Your Honor, you indicated I could make an offer of proof yesterday.

559 I have a handwritten document.

I wonder if perhaps I could read it into the record rather than rewrite it.

JUDGE MALLER: All right, you may do so.

MR. MONAT: Could we have the witness step out when I do that?

JUDGE MALLER: Please leave the courtroom, Mr. Kaufman, temporarily.

THE WITNESS: Yes, sir.

(Witness left the hearing room.)

JUDGE MALLER: All right, Mr. Monat.

MR. MONAT: Well, my offer of proof, Your Honor, is as follows:

That questions put to Richard Kaufman as to his asking for the home address are directly relevant and material to the following contentions of the respondent:

That Richard Kaufman did not ask for Harry Schwartz' address to get that address for a customer's petition, as he claims, but that he asked for the address, an address not listed in the telephone book, as an intentional attempt at intimidation.

That he knew or expected his asking for the address would be related to Harry Schwartz;

That he knew or expected that Harry Schwartz would be dis-
560 turbed that he was looking for his home address;

Two, that during the period from approximately a month before to a month after the election of December 12th and 13th, 1973, there were numerous incidents of damage to property of the company and of Jack LaLanne personnel, including the slashing of tires on automobiles, the pulling of ignition wires on cars, the shattering of lights in the parking lot and the continuous shutting off of the company's power, most of which incidents occurred at the Little Neck location;

That, in addition, during the same period of time, anonymous calls, including threatening calls, were made to Jack LaLanne personnel, including obscene telephone calls to Gabrielle Schwartz, the wife of Harry Schwartz;

That, therefore, Harry Schwartz would be aggravated and upset in this context about Kausman asking for his home address:

And, three, that any alleged statements made by Harry Schwartz to R. Kaufman with respect to Kaufman's asking for Schwartz' address were motivated by Mr. Schwartz' being aggravated and disturbed by what he regarded as an attempted act of intimidation by R. Kaufman and not by any animus as to R. Kaufman's union activities.

Thank you.

561 MR. BLYER: Well, there is not such evidence on the record, I think, to suggest that Mr. Kaufman was in any way responsible for this.

I suggest that there will be none forthcoming.

I would object to any further questioning on this line with regard to the petition that was circulated, Your Honor, as being irrelevant.

JUDGE MALLER: I reject the offer of proof.

Insofar as Mr. Schwartz' reaction to anybody seeking his home address, Mr. Schwartz can testify if he desires as to the reasons for what he said to Mr. Kaufman.

Since the witness Kaufman has testified with regard to what Mr. Schwartz said about the address, that testimony is in the record.

Very well.

Ask Mr. Kaufman if he will return, please.

(Witness returns.)

JUDGE MALLER: Please proceed, Mr. Monat.

Q. (By Mr. Monat) Now, Mr. Kaufman, do you recall that while you were working there since October that Steve Wold was an assistant floor manager? A. Yes.

562 Q. Is he still an assistant floor manager? A. No. He's a floor manager.

Q. A floor manager? A. Yes.

Q. Now, wasn't there a period of time while he was still assistant floor manager that there was a need for a new floor manager? A. That might be sometime around January or at the end of December, I believe.

Q. And do you recall who was made floor manager at that time? A. Well, what happened was, Frank --

Q. Do you recall who was made floor manager at that time?

JUDGE MALLER: Just answer yes or no.

A. It was -- yes.

Q. Who was it? A. Ray Ramos.

Q. That's when Frank Bieler had left? A. Yes.

Q. Now, isn't it a fact that you resented taking any instructions or directions from Steve Wolf as an assistant floor manager? A. Never.

Q. Did you always listen to what he told you to do?

A. Yes.

563 Q. Without exception? A. Without exception.

Q. Do you recall any occasions where you did not clean up properly? A. Well, can I explain it?

Q. Do you recall such an occasion? A. Yes.

Q. Do you recall when it was? A. No.

Q. Approximately? A. I don't believe I did not do it.

Q. So you don't recall any such occasion? A. No, I don't recall.

I recall a situation about --

Q. I just want to know. A. I recall it, okay.

Q. Now, who else was working with you as a part timer in December? A. The names were Bob Cash, Joe Isgro, Philip Matinale, I believe, and Dennis Pillinger.

Q. Did they also take instructions and directions from Steve Wolf? A. Yes.

Q. Do you recall any occasion where you received a warning
564 notice? A. Yes.

Q. How many times? A. Two occasions.

Q. And that was subsequent to October? A. It was after October.

Q. Did there come a time when you concluded that your hours had been cut because of your union activity?

JUDGE MALLER: What was that question?

Q. (By Mr. Monat) Did there come a time when you concluded, Mr. Kaufman, that your hours had been cut because of your union activity? A. I assumed it.

Q. When did you first assume that? A. Oh, I saw them slowly leaving, the hours were being slowly cut.

Q. Well, did you reach that conclusion in June of '73?

MR. BLYER: Objection to the relevancy, Your Honor, as to when he learned -- as to when he assumed that the fact that his hours were being cut as related to his union activities.

MR. MONAT: When he concluded that.

MR. BLYER: Assumed, was his testimony.

JUDGE MALLER: I'll overrule the objection.

You may answer the question.

565 Do you want me to answer it?

Q. Yes.

At what point did you conclude that, if you did? A. Well, when I went from 25 hours to nine and a half hours, I felt tha something was going on.

I'm sure it had to do with, you know, union activities.

Q. But it wasn't until you went to nine and a half hours that you felt that way? A. Just building up, it just strengthened the case that it was happened because of that.

Q. Is there any particular point in time where you concluded that it was because of the union? A. Oh, when it went to nine and a half hours.

Q. I have one more question.

Did you ever have any occasion to sell memberships for Jack LaLanne, Mr. Kaufman? A. In what way?

Q. To sell memberships to Jack LaLanne? A. Personally?

Q. Yes. A. No.

MR. MONAT: No further questions.

JUDGE MALLER: Any redirect?

MR. BLYER: Yes, Your Honor.

566

REDIRECT EXAMINATION

Q. (By Mr. Blyer) Mr. Kaufman, when your hours were reduced from 31 to 25, were any other employee's hours cut, to your knowledge? A. No, not at that time.

That was sometime in July.

Q. Did you -- A. At the end of June, the beginning of July, that was.

Q. And at that time, Mr. Kaufman, had you already signed a card for Local 966? A. Yes.

I had signed the card in June -- June 5th, 1973.

Q. Now, when you signed the card, Mr. Kaufman, who was present? A. Frank Bieler, who was the floor manager; Steve Wolf, the assistant floor manager; Joe Isgro, parttime instructor; Bob Cash, Parttime instructor; and myself; and union representative, Glen McCarthy.

Q. Now, did there come a time that Mr. Matinale also signed a card for the union? A. Yes.

Q. Were you present on that occasion? A. I'm not positive. I'm not sure of that.

Q. At the time in mid-October when your hours were
567 reduced again, Mr. Kaufman, do you recall what happened to the hours of Cash and Matinale? A. Repeat that, please.

Q. Do you recall what happened to the hours of Cash and Matinale when your hours were reduced in mid-October 1973?
A. I believe theirs was also cut.

Q. And when your hours were finally cut from 16 to nine and a half, at around March of '74, who were the other employees employed by Jack LaLanne as male instructors? A. Dennis Pillinger, Al Romeo, Larry Moskowitz and Philip Matinale.

Q. Now, in relation to when all of you began your employment, who was the most senior?

MR. MONAT: Objection.

JUDGE MALLER: Overruled.

A. I was.

I had been there almost three years.

Q. And who was second senior? A. Philip Matinale.

Q. Now, at that time, when your hours were cut to nine and a half, who else had their hours cut, if anyone? A. Philip Matinale, his hours reduced to eight and a half hours a week; and I
568 believe Larry Moskowitz, his hours also reduced.

Q. Now, thereafter, did there come a time when any of the five of you had your hours increased within, let's say, the next month?
A. Oh, in the next month, about three weeks after that, Larry Moskowitz' hours had increased to about 18 hours a week.

Al Romeo's hours increased to about 18 hours a week --

JUDGE MALLER: From what?

THE WITNESS: I think from about five or seven.

Q. (By Mr. Blyer) Is that for both Romeo and Moskowitz?

A. Just about, approximately.

Dennis Pillinger's stayed the same or he left right after that, a couple of weeks later, about two weeks later.

Myself and Phil's hours stayed the same.

Q. Now, when had Moskowitz first become employed with the company? A. I think sometime around February.

Q. And what about Mr. Romeo? A. About the same time.

Q. And you had been there three and a half years?

A. No, just close to three, some were around three, two and a half to three years.

569 Q. And Mr. Matinale, how long had he been with the company?

A. About a year and a half or a year plus.

Q. Now, when your calisthenics classes were reduced from 7 to four, had you already signed a card for Local 966? A. Yes, I did.

Q. Now, I think you described in response to a question posed by counsel for the respondent, a situation in October of 1973 regarding Steve Wold where I believe he asked you to teach a calisthenics class.

Do you recall that? A. I'm not sure.

I think it was Bruce Evans, I think who you are referring to.

Q. No.

I'm talking about a situation when shortly after I think Wolf asked -- when Wolf asked you if you would take a calisthenics class -- excuse me.

You are correct.

I'm referring to a situation where when Wolf informed you of a further reduction, I think, from four to zero, of your calisthenics classes.

Do you recall that? A. Yes.

570 Q. When was that? A. That was sometime in the end of December and the beginning of January.

Q. And what did you say to him?

Do you remember? A. I just said, "Is that it?"

Q. Now -- A. "Is that all?"

Q. Now, at some subsequent time, did you have a conversation with him regarding that reduction? A. Well, I might have said that now it might make work a little bit easier, meaning that I wouldn't have to, you know --

MR. MONAT: Objection.

Q. (By Mr. Blyer) Well, my next question is:

Why did you say to him that that would make work a little bit easier for you?

MR. MONAT: Objection.

JUDGE MALLER: You may answer it.

A. Well, for no -- you know, for the other instructors to give classes, you have to exert a lot of energy.

For myself, the same thing and I really enjoyed it.

However, I wasn't exerting that extra energy, it would make things easier even though I enjoyed doing it.

571 Q. Do you recall the occasion in approximately October of 1973, Bruce Evans asking you to perform an extra calisthenics class? A. Yes.

Q. Okay.

Will you tell us what you said to him when he asked you that question? A. It was on a Saturday.

I had just finished giving a calisthenics class. I went on the gym floor.

There were only three of us -- Bob Cash, Frank Bierler, and myself -- and it was pretty busy that day.

So Paulette Anderson had come in late and gave a calisthenics class.

What happened was, Bruce Evans, after the first class, wanted her to go home because she had come to me and told me, you know, her problem.

I said, "Well, maybe if I didn't give the class, possibly he might let you stay."

So when he asked me to give the class, I told him that, "Well, I just gave a few classes and maybe you can ask the other instructors, because I was sure that they wouldn't give it at that time.

Plus, we were short of help and they needed me on the gym floor.

572 They felt badly if I would give the class.

I didn't want to be the bad guy that day.

So I told Bruce Evans that, you know, why don't you keep Paulette here.

And he told me that, you know, she came in late and Gabrielle wanted him to send her home, and that I should, you know, give the class.

So I told him, well -- he didn't want to ask the other instructors and it was up to me, so I decided that as a personal favor to him, I would give the rest of the classes, which I did.

Q. Tell us what happened in the incident that you related to counsel for respondent regarding the time that you allegedly were claimed to have cleaned up improperly. A. I had been served with

a warning notice. I was asked to sign it by Steve Wolf. It was on, I believe, a week later about or a couple of days later. It says that I had failed to vacuum the track area one night.

So I explained, I told him I wouldn't sign it.

He told me Barry Flichstein had told him to give it to me.

So we had a meeting the following day, it was Tuesday night, and Richie Ohrenstein, the manager at the time said if anybody had any problems, to come to him.

573 So I explained, I said, you know, that I believe I was given a warning notice unfairly, unjustly.

So he said, "Well, we'll discuss it in the office."

So myself, Frank Bieler, the floor manager, and Richie Ohrenstein, went to his office.

So as it was, it was about 25 or so after 9:00 when I had gotten to the vacuum cleaning.

I did the vacuum cleaning in the main gym and I was going to the track area when Frank Bieler told me, he said, "Forget about it because we will have someone do it tomorrow night."

And he told Richie Ohrenstein exactly what I had told him.

Therefore, Richie --

JUDGE MALLER: This is what you told Mr. Ohrenstein?

THE WITNESS: Right, and Frank Bieler agreed.

That's the way it ended. I never signed the warning sheet.

Q. (By Mr. Blyer) And when did this incident, to your best recollection, occur? A. Sometime around October of 1973.

Q. You talked about receiving two warning notices.

A. Yes.

574 Q. What was the other one related to? A. The second one I received a few weeks later.

It had to do with not signing out properly.

* * * * *

580 BY MR. BLYER:

Q. Mr. Kaufman, were you present in the hearing that took place in November or December of -- it's really and December of '73 when Mr. Bostinto testified? A. Yes.

Q. Did you hear his testimony regarding his desire to transfer you to Lefrak? A. Yes.

Q. Do you recall it? A. Yes.

581 He claimed that he wanted to bolster the attendance of the Lefrak City gym and felt that if I was there giving calisthenics classes, that it would, you know, do the job.

Q. When you say "bolster the attendance," what do you mean? A. Get a better attendance, a higher attendance, more people participating.

Q. Well, do you recall him saying anything about the membership or the number of members coming down to Lefrak at that time? A. Right.

It was very -- it was very slow.

He felt that I could bring in more members, new people, you know, by going over there.

Q. And Mr. Bostinto had observed you performing your job, calisthenics classes and doing other work; isn't that correct? A. Correct.

Q. And do you remember -- withdrawn.

Thank you.

MR. BLYER: I have no further questions of this witness.

581 RECROSS EXAMINATION

582 Q. (By Mr. Monat) In October of 1973, Bieler and Wolf were your friends; is that correct? A. Correct.

Q. And union supporters with you? A. And union -- yes.

* * * * *

583 PHILIP MATINALE

was called as a witness, and having been first duly sworn by the administrative law judge, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) What is your full name? A. Philip Matinale.

Q. Mr. Matinale, when did you begin working for Jack LaLanne in Douglaston? A. I began working with Jack LaLanne in Douglaston in early February of 1973.

Q. And your position? A. Instructor.

Q. For the most part, did you work at Douglaston location? A. Yes.

Q. All right.

Now, do you recall an incident in late February, approximately, of 1974, involving a Mr. Pete Trainor? A. Yes, I do.

Q. Okay.

584 Now, who was Mr. Pete Trainor? A. At the time, he was acting floor manager.

Steve Wolf couldn't work that night, and he was taking his place. I believe he worked at another club.

Q. Okay.

Now, will you tell us what happened between you and Mr. Trainor on that evening? A. Well, Pete Trainor needed a calisthenics instructor for that evening.

I believe myself, Larry Moskowitz, Al Romoe and Richard Kaufman were the employees working at that time, instructors.

He had asked us to give the class, meaning myself, Larry and Al Romeo, and none of us could give the class.

I wasn't prepared, and the two of them were new at the club.

So I told Pete to ask Richard Kaufman because he was a qualified claisthenics instructor.

Q. Now, what happened that night with regard to who taught the class? A. Richard Kaufman taught the class.

Q. Before you -- did Mr. Trainor respond to you in any way when you suggested to him that he speak to Richie Kaufman about giving the class? A. I'm pretty sure he went and asked
585 him. And then Richie said yes.

Q. I'm sorry, you said who gave the class that evening? A. Richard Kaufman.

Q. Now, after the class was over, did you have a conversation with Mr. Wilton? A. Not a personal conversation myself.

He walked in the gym and I happened to be standing there.

Q. Did you hear a conversation between Mr. Wilton and someone? A. Yes, I did.

Q. And who was Mr. Wilton speaking with? A. Richard Kaufman.

Q. And what was that conversation? A. He came in the gym and said, "Richie, do me a favor, don't ever -- don't ever give a class again, I could lose my job for this."

And that was the end of the conversation, as far as I can remember.

Q. Now, what position did Mr. Wilton have at that time?
A. He was the manager of the spa in Little Neck.

Q. And as such, what is his authority, if you know?
586 What was his job? A. Well, everything concerning that club.

Q. Now, did there come a time that Mr. Wilton left that club? A. Yes, he did.

Q. Do you know approximately when that was?
A. Approximately the second or third week in June.

Q. Now, after --

JUDGE MALLER: June of '74?

THE WITNESS: June of '74, yes.

JUDGE MALLER: Thank you.

Q. (By Mr. Blyer) And who replaced Mr. Wilton?
A. Dennis Karf.

Q. Now, where was Mr. Karf from? If you know?
A. I really don't know what club he worked in.

Q. Do you know if he worked with Jack LaLanne in any capacity? A. Yes.

I think he was a manager in another club.

Q. Okay.

Now, did you have a conversation with Mr. Karf approximately the second or third week of June? A. Yes, I did.

Q. Would you please tell us where it took place? A. It took place in the main gym.

587 Q. Do you recall the time of day? A. It was about 5:45.

Q. Okay. Will you tell us the substance of the conversation between the two of you?

a warning notice. I was asked to sign it by Steve Wolf. It was on, I believe, a week later about or a couple of days later. It says that I had failed to vacuum the track area one night.

So I explained, I told him I wouldn't sign it.

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Q. Okay.

584 Now, who was Mr. Pete Trainor? A. At the time, he was acting floor manager.

Steve Wolf couldn't work that night, and he was taking his place. I believe he worked at another club.

JUDGE MALLER: Excuse me.

A. Yes.

JUDGE MALLER: What was the date?

MR. BLYER: The second or third week of June.

JUDGE MALLER: Thank you.

Q. (By Mr. Blyer) Go ahead.

Tell us the conversation. A. He introduced himself as Dennis Karf.

He said, "I'm the new manager of this spa." He said, "If there are any problems I can help you with, just let me know."

And just before he left, "There's only one thing I can't help you with, and that's hours, giving you extra hours."

Q. Okay.

Now, later that -- was that the whole conversation?

A. That was the whole conversation.

Q. Later that evening did you again speak with Mr. Karf?

A. Yes, I did.

588 Q. Approximately what time was that? A. Approximately 8:15.

Q. And where did that one take place? A. In the jogging area.

Q. Was anyone else present? A. There were members there, but I was the only one talking to him.

Q. Okay.

What was the conversation between the two of you? A. Well, he came up to me.

And there is a man sick -- you know, Joe Guarino had been out sick.

He needed a man to work on Friday night.

So he said, "Let's forget this vendetta bullshit. I need you to work tomorrow night. Can you do it?"

I said, "Yes, I'll be glad to."

And then he said "Can you work all day Sunday instead of a half a day?"

I said, "Yes, I will."

He shook my hand and that was the end of that conversation.

* * * * *

590 Q. Prior to the second or third week in June -- prior to the second -- withdrawn, please.

Prior to the time you signed a card for the union, how many hours were you working? A. 22 and a half.

591 Q. And did there come a time when that was changed?
A. I believe October.

Q. Of what year, please? A. 1973.

Q. And what were they -- and what was the change?
A. 17 and a half to 18 steady; in other words, sometimes it was 17 and a half, sometimes it was 18.

Q. Now, was anyone else's hours cut at this time, if you can recall? A. I believe Richard Kaufman's.

Q. Do you remember anyone else's being cut? A. I think Bob Cash, too.

MR. MONAT: Your Honor, may I have a standing objection to this?

JUDGE MALLER: Yes, you may.

Q. (By Mr. Blyer) Now, did your hours change again thereafter? A. Yes, in February they did.

Q. And what were they changed to at that time? A. They were reduced to eight and a half.

Q. Now, at that time, were anyone else's hours reduced?
A. Yes.

Q. Richard Kuafman's, Larry Moskowitz', and Al Romeo's.
A. Dennis Pillinger's remained the same.

Q. Do you recall Mr. Romeo's hours being reduced at that
592 time, as well? A. I think so.

Q. Now, thereafter, was there a change in Mr. Moskowitz' and Mr. Romeo's hours? A. Yes.

About two or three weeks later, Larry Moskowitz was increased from four, I think, to 18, and Al Romeo was increased from four to anywhere between 11 and 15, and I really don't remember exactly.

Q. What about your hours; was there any increase for the next month or so? A. None.

Q. Now, how long did you continue working for -- withdrawn, please.

When had Mr. Moskowitz and Mr. Romeo been hired?
A. They had just been hired about two weeks before.

Q. Now, you testified that you were working eight and a half hours -- A. Yes.

Q. -- as of mid-February 1974? A. Yes.

Q. How long did that continue? A. Up until I had the conversation with Dennis Karf.

Q. Now, that conversation we placed in the second or third
593 week of June. Is that correct? A. Yes.

Q. Do you recall how many hours you worked in the third week of June? A. Yes, I do.

Q. How many hours did you work in that week of June?
A. I worked, I believe, 13 hours.

Q. And the fourth week of June? A. 36 hours.

Q. The first week of July? A. I believe 11 hours.

Q. The second week of July? A. 16 and a half hours.

Q. When you signed your card for the union, who else was present, Mr. Matinale? A. I believe Frank Bieler.

MR. MONAT: Your Honor, General Counsel is attempting to establish, apparently -- and again I think this is improper because it's a back-door type of tactic that other employees, apparently Mr. Matinale and anyone else who was cut, were also union supporters.

I say he's bringing in as part of his case what's in effect, new 8A-3 type allegations.

I think it's improper.

594 JUDGE MALLER: There will be no finding on anything that is not alleged in the complaints, as amended, as being an unfair labor practice, regardless of what evidence is introduced in this case.

The findings will be limited by the allegations in the complaint, as amended.

MR. MONAT: I'll go further, Your Honor, and say that other cuts must be presumed lawful unless they were made the subject of a specific charge and complaint allegation.

MR. BLYER: Your Honor, that's a ludicrous position and I would totally object to that.

JUDGE MALLER: This is part of your defense.

I assume you will introduce evidence as to conditions requiring cuts in hours.

We will look at it in that way.

Proceed, please.

MR. BLYER: Thank you, Your Honor.

Q. (By Mr. Blyer) Mr. Matinale, do you recall a conversation towards the end of February with Mr. Ray Ramos and Steve Wolf? A. Yes, I do.

Q. And what were their positions at the time? A. Well, Ray Ramos had come over as floor manager, and I believe Steve Wolf was still assistant floor manager but training to be the floor manager.

595 Q. And do you remember where this conversation took place? A. In the main gym.

Q. And do you remember if anyone else was present besides the three of you? A. No, there wasn't.

Q. Okay.

Now, what was that conversation?

MR. MONAT: When?

MR. BLYER: Towards the end of February.

Q. (By Mr. Blyer) Go ahead, Mr. Matinale, what was that conversation? A. They had asked me to -- if I could work Thursday nights.

This is when I had been reduced to eight and a half hours.

They asked me if I wanted to work Thursday nights.

Q. Well, what nights were you working at that time? A. I was working Tuesday night and Sunday morning.

Q. For a total of how many hours? A. Eight and a half.

Q. Okay.

Now, at that time, Mr. Matinale, who else was working on Tuesday night with you? A. Richard Kaufman, I believe Larry

596 Mostkowitz and Al Romeo but I'm not positive as to the last two.

Q. Okay.

Now, go on. A. They asked me if I would work Thursday night.

I said, yes.

Q. Go ahead. A. And, well, when they said you'll work Thursday night, they said okay, you won't be working Tuesday night anymore.

I asked why. I asked what's the reason.

So they said they want one of their best instructors on both Tuesday and Thursday nights.

I said that if you want your best instructors on Tuesday and Thursday nights, why should you take my Tuesday away, you know, and just give me Thursday, why can't I work both?

So they said -- the reason they gave me was because I was making -- I had just been given a raise about two weeks before, and they said because I was making a quarter more an hour than Al Romeo or Larry Moskowitz, and one of those persons took my place on Tuesday.

And I asked -- I asked -- I said, "That's ridiculous because if I'm a better instructor, for instance, and if I handle one good guest, he's bringing in a membership fee which totally exceeds the quarter an hour I'm making more.

597 I knew that that wasn't the reason.

So I kept asking.

I said, "Why?" What's the reason?"

They didn't give me an answer at first, and then I kept drilling.

Finally Ray Ramos said, "We just can't give you any more hours, we have orders not to give you anymore hours."

And that was the end of that conversation.

Q. Did they refer just to you or did they speak about anyone else? A. They just referred to me at the time.

Q. Did they make reference as to who they thought their best instructors were other than you? A. Yes, they did; Richie Kaufman was the other they said.

Q. And as it turned out, what happened? A. I worked Thursday night and they took me off Tuesday night.

Q. And what happened to Mr. Kaufman?

Did he remain working on Tuesday night? A. He remained on Tuesday night, yes.

* * * * *

598 CROSS EXAMINATION

Q. (By Mr. Monat) Mr. Matinale, did you give an affidavit to Mr. Blyer -- A. No, I didn't.

Q. You never gave a signed statement? A. Never.

Q. Did they ever ask you to give one? A. No, not that I can recall.

Q. When were you first contacted by anyone in terms of the investigation of this case? A. I believe Mr. Blyer called my house last week, but I wasn't home.

Q. Last week was the first time, to your knowledge? A. Yes.

Q. And he subsequently got in touch with you? A. Not on the phone, no.

599 Q. In person? A. No.

Q. Not at all? A. I saw him Tuesday, was the first time.

Q. Oh, I see. Were you subpoenaed to appear and testify? A. Yes, I was.

Q. And, to your knowledge, nobody made attempts to talk to you prior to your being subpoenaed? A. They may have -- yes, they may have made attempts but --

Q. None that you know of? A. Well, who, e.g.?

Q. Did Mr. Rosen ever call you? A. Never.

Q. Before? A. Never.

Q. Or Mr. Blyer, before you got the subpoena? A. Mr. Blyer did call you before I got the subpoena. I said I didn't talk to him.

Q. What did he say to you? Oh, he just left a message? A. Yes.

Q. How much before you got the subpoena did you get the message from Mr. Blyer that he called? A. About a week.

Q. Oh, I see.

600 MR. MONAT: Your Honor, I want to again object. I object to all of the testimony of this witness.

This is a situation where the Government has, in effect, gone ahead and having committed itself to having issued a complaint, is now simply going ahead and getting witnesses in support of its case, as many as possible, without regard to any effort to investigate and get an objective response.

If Mr. Matinale was important to this case, it should have been done long before a week prior to this hearing.

I object to all of his testimony, the effort to get his implication through the back door that some how his treatment is evidence in support of the treatment of Mr. Kaufman and it's alleged to be an 8A-3.

JUDGE MALLER: Mr. Monat, it's neither your concern nor mine how the Regional Office of the Labor Board investigates or prepares its cases. Your objection is overruled, Mr. Monat.

MR. MONAT: I respectfully disagree with that ruling.

JUDGE MALLER: I understand that you do.

Please proceed.

* * * * *

601 Q. Now, have you been friends with Mr. Kaufman over the past year, Mr. Matinale? A. Yes, I have.

Q. And did you understand that you would be expected to come here and testify in his support? A. When I -- when I was called on the phone, that was the only time I found out.

Q. At that time you understood that, though? A. I wasn't sure what it was in reference to, then.

Q. Okay; you weren't sure.

When did you learn what it was in reference to? A. When I got the subpoena.

Q. I see.

At that point, Mr. Matinale, did you understand that you would be expected to come here and testify in support of Mr. Kaufman?

A. In support of Mr. Kaufman?

Q. Yes. A. I was under the influence that I was here in support of myself and Anderson more than Mr. Kaufman. I wasn't told that I was here just in support of Mr. Kaufman.

I wasn't told that at all.

Q. Did anybody explain to you what the case is about?

A. Yes.

Q. Did they explain to you what the case was about

602 pertaining to Mr. Kaufman? A. Yes.

Q. This gentleman, Larry Moskovitz, he was a fairly young guy, about 17 years old? A. Yes.

Q. At one time he was working in the health food store in Little Neck? A. Yes.

Q. Now, when was the conversation you had where you were present and John Wilton talked about Richie Kaufman and calisthenics classes? A. I'm pretty sure it was the end of February.

Q. The end of February? A. I'm pretty sure.

Q. And what's the source of reference for that date?

How do you remember that? A. The reason was Richie Kaufman and I weren't working Tuesday nights together after my hours had been cut, so I assume it was before March.

I think it was the end of February, as far as I can recall.

Q. Now, I believe you mentioned there was the use of the word vendetta by somebody? A. Yes.

603 Q. That was by Mr. Karf? A. Yes.

Q. How do you spell that? A. As far as I know, C-o-f-f-.

Q. And when did he start working; when John Wilton left? A. That's right.

Q. And where did Mr. Karf come from? A. He came from another Jack LaLanne's. I don't know which location exactly.

Q. He had not been at Little Neck before? A. Not while I was there.

Q. Did you know him before? A. No.

Q. I see.

And what did he say to you in the conversation you had with him in the second or third week of June? A. The first or the second conversation?

Q. What did he say to you in the first conversation -- what did you say to him in the first conversation? A. He addressed me first.

Q. All right.

Did you say anything to him? A. After he started the conversation?

604 Yes. He asked me if -- he asked me if I had any problems.

I said, "Well, not really."

And he said, "The only problem I can't help you with is giving you hours."

Q. Did he say anything else at that time? A. The end of the conversation.

Q. Did you say anything about hours to him? A. I said that that was the only problem.

Q. You told him you had a problem with hours? A. I didn't address him with the problem. He told me that that was the problem, that he can't give me hours.

And I said, "Well, that would be the only problem."

Q. Did he say why he couldn't give you hours? A. No.

Q. Did you ask him why? A. Not at that time.

I knew why.

Q. You knew why? A. Yes.

Q. And would you just tell us who had told you why?

A. Excuse me.

Q. Who told you why? A. Directly?

Q. Yes. A. No one directly.

605 Q. Oh, I see.

You had a second conversation with Mr. Karf? A. Yes.

Q. And when was that? A. That was about 8:15 the same night.

Q. And what did you say to him? A. He addressed me first.

Q. I see.

What did he say to you? A. He said, "There's a man out sick, Joe Guarino," and he said, "Let's forget this vendetta bullshit. Can you work tonight?"

I said, "Yes, I'll be glad to."

And then he said, "Can you work all day Sunday instead of just half the day?"

So I said, "Yes, I'll be glad to do that, too."

That was the end of the conversation. We shook hands on it.

That was it.

Q. Well, did he say vendetta -- did he say union vendetta? A. He didn't say union vendetta, he said vendetta.

Q. Well, now, how long had Mr. Karf been there at that point? A. I think he started the beginning of the week, but
606 that was the first day I worked under him.

Q. Did you ask him what did he mean when he said vendetta, what is he talking about? A. Oh, I knew what vendetta means.

Q. You didn't ask him anything about that? A. No. I knew what he meant.

Q. Did you know this Mr. Karf before he came to Little Neck? A. I never met the man before.

Q. Did you testify in the representation case last summer? A. No, I didn't.

Q. Did you know there was a hearing last summer -- prior to today, have you ever testified in any proceedings with reference to the NLRB and Jack LaLanne? A. Never.

Q. Were you an observer at the election? A. I was supposed to be, but I wasn't.

Q. You were not an observer? A. No.

Q. When did you sign a card for the union, if you did?

A. I signed it in June.

I believe it was the day after everyone else, most of the instructors.

607 Q. The day after everyone else? A. I'm pretty sure.

Q. Who is everyone else? A. Frank Bieler, Steve Wolf, Richard Kaufman, Bob Cash, as far as I know, that was all.

And then I was the next day.

Q. What about Joe Isgro? A. He may have been there.

I wasn't -- I wasn't there when hey signed the cards, as far as I know.

Q. Now, is this the first day that you've been present at the hearing or have you been here -- A. No.

I've been here.

Q. You've been here? A. Yes.

* * * * *

Q. Strike that, please.

Did you on any occasion make phone calls fromlists of employees on behalf of the union? A. No, I didn't.

* * * * *

608 Q. * * * Now, you had a conversation with Ray Ramos at the end of February.

Was that your testimony? A. Yes.

Q. Approximately when in February was that? A. I'd say the third or fourth week in February.

I really -- I'm really not positive.

Q. And what did he ask you to do?

What did he say to you? A. Well, Steve Wolf was the one who told me about the hours, but they were both there.

So Steve Wolf had asked me.

Q. Steve Wolf and Ray Ramos were present? A. And Ray Ramos, yes, they were.

609 Q. And who spoke to you, which one? A. Well, both of them at different times.

Q. They both talked? A. Not at the same time, at different times.

Q. What did Ray Ramos say? A. Ray Ramos said -- I asked why I couldn't have any more hours.

And I believe Steve Wolf told me because I was making a quarter more an hour.

And after I said that that's -- that I don't believe that that's the reason, Ray Ramos said, "We just can't give you hours, we were told not to give you any more hours."

And Ray Ramos said that.

Q. What did you say? A. Excuse me?

Q. What did you say? A. When he said --

Q. What did you say? A. When he replied, when he gave me the answer?

Q. Yes. A. I said, "Well, that's more like it."

You know, because I knew what he was referring to.

Q. Yes, I understand you knew what he was referring to.

610 But, you said you replied, "That's more like it." A. Well, he didn't want to come right out and tell me why, so he gave me a reason.

He said he has orders not to.

And I said, "Okay."

Q. And you said, "Okay?" A. Because it wasn't the reason -- the reason wasn't because I was making more money.

Q. As far as you were concerned? A. No.

They told me that.

That was told to me.

I said, "Tell me the real reason." And that's what they said.

Q. Then what did you do?

Did you talk to anybody about that conversation? A. I can't remember if I did.

At the time, I wasn't working, I was using the facilities.

I don't remember if I told anybody right away.

I know I've talked to people about it.

Q. Now, you say there was a three-week period after your hours were cut until Larry Moskowitz and Al Romeo had an increase in hours? A. It may have been two or three.

Q. A couple of weeks?

611 Well, in between those couple of weeks, do you know of anyone else's hours who were increased? A. Between which time?

Q. During those two to three weeks where you were cut and Romeo and Moskowitz, did anyone else get hours at that point? A. Extra hours.

Q. Yes. A. I can't recall anyone getting extra hours at that time, no.

MR. MONAT: I'd like to ask General Counsel if he made any memorandum from conversations that he may have had with this witness.

MR. BLYER: Nothing that falls within the Judge's decision regarding what I owe you. I just have what is commonly known as the work product.

MR. MONAT: Well, Your Honor, I would ask that any information taken down from this witness be produced.

JUDGE MALLER: Counsel said he doesn't have it.

I must respect his statement.

MR. MONAT: Well, may I ask this: That the Judge be given an in-camera inspection of any document that General Counsel would claim is his work product.

612 And you could rule on that basis.

MR. BLYER: I'll be glad to show it to Your Honor.

JUDGE MALLER: Let me see it.

MR. BLYER: Yes, sir. (handing.)

JUDGE MALLER: Mr. Blyer, this document you handed me, was this made at the time you interviewed Mr. Matinale and he gave you information?

MR. BLYER: This was done, I would say, on two occasions when I spoke to Mr. Matinale during the course of preparing for trial.

I think it would clear up things, I never took notes from Mr. Matinale in any respect, rather I asked him about certain incidents, he told them to me, I incorporated them in what you have in front of you right now to be used when I questioned Mr. Matinale.

JUDGE MALLER: Very well.

I consider this document to be a work product.

I will not require General Counsel to produce it.

MR. BLYER: Thank you, Your Honor.

JUDGE MALLER: Please proceed.

Q. (By Mr. Monat) I believe you testified, Mr. Matinale, that there was a time where you were asked to work on the floor. Is that correct? A. I was asked --

613 Q. I'll strike that.

Is it your testimony that there was a point where you told Mr. Trainor that you were not prepared to handle a class?

A. That's right.

Q. What kind of a class was it you were not prepared to handle? A. Calisthenics class.

Q. I see.

JUDGE MALLER: Just for my own information, what preparation is necessary --

THE WITNESS: Well, instead of, you know, going one at a time and thinking about them, you know, the people like a quick workout, so you should have a plan of exercise ready.

JUDGE MALLER: I see. Thank you.

Q. (By Mr. Monat) Did there come a time that you did start giving calisthenics classes? A. I've given one class.

Q. One? A. Yes.

Q. When was that? A. About three weeks ago, four weeks ago.

614 Q. You had not done them before that? A. Never.

Q. Did you register any complaint about being assigned a calisthenics class? A. I was asked, I wasn't told to do it. The --

Q. You mean you were asked to take a calisthenics class?

A. To give the calisthenics class.

Q. And did you do it? A. I did do it.

Q. Did you complain about the fact that you were asked to do it? A. No.

I did it as a favor.

Q. You did it as a favor? A. That's right.

MR. MONAT: Nothing further.

JUDGE MALLER: Mr. Matinale, are you still working for the Jack LaLanne Company?

THE WITNESS: Yes, I am.

JUDGE MALLER: Thank you.

Any redirect?

MR. BLYER: Very brief, Your Honor.

REDIRECT EXAMINATION

Q. (By Mr. Blyer) Prior to Mr. Trainor's request for you
615 to teach a calisthenics class, had Mr. Romeo or Mr. Moskowitz ever taught a calisthenics class? A. No, they hadn't.

Q. Did Mr. Trainor ask anybody else besides you, Romeo, Mr. Moskowitz and Mr. Kaufman on that occasion to take that calistheics class? A. I don't believe he did.

Q. What do you mean you testified you were supposed to be an observer?

MR. MONAT: I object.

JUDGE MALLER: He may answer it.

A. I was supposed to observe the election, I think it was a Tuesday, December 12th, and I believe Richard Kaufman and I were working -- were supposedly working those two -- those nights together, that night together, Tuesday, and they needed me at the gym.

I didn't -- you know, so, I felt I'd rather work that night.

Q. Did you ever indicate to anyone that you were going to be the observer? A. I --

MR. MONAT: I object, Your Honor.

JUDGE MALLER: You may answer it.

A. I don't believe I did.

Q. All right.

616 Did you ever put it in writing? A. I don't believe I did that, either.

Q. Did you ever see your name in writing as an observer for Local 966?

MR. MONAT: I object.

JUDGE MALLER: The writing would be the best evidence of that.

MR. BLYER: I am going to look for it.

I haven't found it yet.

I'm just curious if the witness recalls.

A. I've never seen it in writing.

I didn't see the list.

* * * * *

617 JEAN MARIE MURPHY

was called as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) What is your full name? A. Jean Marie Murphy.

Q. Miss Murphy, when did you begin working for Jack LaLanne? A. January 2nd, 1974.

Q. And when did your employment with them cease?

A. The end of March, the middle of March.

Q. And what job did you hold while you were there?

A. Instructress.

Q. Now, Miss Murphy, do you recall working on Thursdays from the afternoon? A. Yes, from 1:00 to 6:00.

Q. And do you recall what you did on those Thursdays?

A. Yes.

I taught calisthenics classes every hour on the half hour.

618 Q. Now, at the time you began teaching calisthenics classes, can you give us an approximate date on that? A. The date that I began giving them as of --

Q. On Thursdays. A. On Thursdays?

Q. Yes. A. I'd say February.

Q. And who had given them on Thursdays before you?

A. Prior to me, it was Jackie.

JUDGE MALLER: Prior to you it was who?

THE WITNESS: Jackie.

JUDGE MALLER: Jackie who?

THE WITNESS: I don't know how to say her last name.

MR. BLYER: May I help, Your Honor.

JUDGE MALLER: What?

MR. BLYER: May I help the witness?

JUDGE MALLER: Yes, sure.

Q. (By Mr. Blyer) Is that Jacqueline Balalaos? A. Balalaso, yes.

Q. And at the time you began giving calisthenics classes, was Miss Paulette Anderson still working for the company?

A. Yes, she was.

619 Q. I'm talking about Thursdays now? A. On Thursdays?

Q. Yes. A. No.

Q. No, no.

I'm saying when you began teaching calisthenics classes on Thursdays, was Miss Anderson still working for the company?

A. Yes, she was.

Q. Okay.

Now, when you first began working for the company, who was the floor manager in charge of instructress like yourself?

A. Anita Katz.

Q. Now, did there come a time thereafter, Miss Murphy, that that was changed? A. Yes.

Q. Okay.

Do you remember when that took place? A. I'd say about three weeks after I was working there, which would be the middle of January.

Q. Okay.

Will you tell us how you learned about the change?

A. How I learned?

620 Q. Yes. A. Well, at the time Anita was floor manager and three weeks after that the appointed floor manager was Joan Holland.

She was introduced with Dee Arnot as an assistant floor manager by Anita Katz to Jackie and I.

Q. Who is Dee? A. Assistant floor manager.

Q. Who told you that they were now floor manager and assistant floor manager? A. Anita Katz.

Q. And where did this take place? A. On the main gym floor.

Q. And who was present beside Anita Katz? A. Just Jackie and I, Joan Holland, Dee and Anita.

Q. Do you recall any of the other instructress being present?

A. No.

Q. Do you recall a conversation about a week or so later among yourself, Jaquiline Balalaos, Joan Holland and Dee Arnot?

A. Referring towards Paulette and Debbie?

Q. Yes. A. Yes, there was a little conversation there.

It was on the main gym floor.

It must have been about 5:45 before they had gotten in to work

621 because they were parttimers and they began at 6:00.

And we were told by Joan Holland that we weren't -- not that we weren't supposed to talk to them, but to stay away from them because they were bad news for the company.

It wasn't stated why they were bad news because we didn't know anything about the union.

We were just told to sort of stray away from them because they wanted them fired.

Q. Did you or Jaqueline or anyone else respond to that? A. Well, we didn't use -- we used our own judgment.

We -- you know, they were nice girls.

We hadn't known them very long.

We got along with them. So we didn't --

Q. Well, my question is, did you say anything to Joan Holland when she made that statement to you and Jacqueline? A. No.

Just a nod like, you know, to not agree with it or against it, just okay.

Q. Now, at the time that Miss Holland made those statements to you, what job was she performing? A. Floor manager.

Q. And what exactly do you remember her doing prior to -- in the weeks prior to that conversation? A. I --

622 Q. What was her job at that time? A. Handing out cards, telling people to clean or what-not to do or how to do it or when to do it.

Q. What about, did she have any role with regard to lunches or your breaks or anything like that? A. Yes.

Well, she set up our time schedule; in other words, what time you went to lunch, what time you were supposed to be back, you know, as far as breaks go.

Q. Thank you very much, Miss Murphy.

MR. BLYER: I have no further questions, Your Honor.

JUDGE MALLER: You may cross examine.

CROSS EXAMINATION

Q. (By Mr. Monat) Did you give an affidavit to Mr. Blyer in connection with the investigation of this case, Miss Murphy?
A. Yes.

An affidavit referring to --

Q. A signed statement of any kind? A. To testify?

Q. Yes. A. Yes, I did.

MR. MONAT: May I have that, please?

MR. BLYER: She doesn't understand your question.

She didn't give me an affidavit.

623 A. I signed something before.

MR. BLYER: What she signed was a Federal Government pay for all witnesses for their coming.

JUDGE MALLER: Voucher for attendance fee?

MR. BLYER: Yes, that's what she signed.

Q. (By Mr. Monat) When were you first contacted by the NLRB in terms of the investigation of this case?

Do you understand what I mean by that? A. I wasn't contacted by them, I was told by Jackie.

Q. Jackie Balalaos? A. Yes.

Q. To come here? A. Right.

Q. I see.

Did you get a subpoena in the mail? A. No, I didn't.

Q. Oh, I see.

When did she tell you -- you were not subpoenaed?

A. No, I wasn't.

MR. MONAT: May I ask General Counsel, were you referring to a subpoena voucher that was signed?

MR. BLYER: Let me show it to you.

MR. MONAT: Are you paying travel expenses? It doesn't matter.

624 MR. BLYER: Here (handing).

Your Honor, it reads, "Claim for Fees and Mileage of Witness."

JUDGE MALLER: Very well.

Q. (By Mr. Monat) When did Jackie Balalaos first talk to you? A. Jackie Balalaos talked to me two days ago, which was the 18th -- the 17th, excuse me.

Q. And what did she say to you? A. She --

MR. BLYER: Your Honor, I object to the question as not being relevant to this proceeding, whatever she said to her.

MR. MONAT: Your Honor, I submit that this goes to credibility.

The witness is being, in effect, drummed up for the last minute for testimony.

I think it's all been -- there's a tendency when that happens to bring out a certain likeness in all testimony, everybody talks to each other, you got to go and corroborate this and this all comes together at the hearing.

JUDGE MALLER: I will overrule the objection.

Q. (By Mr. Monat) What do you recall she said to you?

625 A. The only thing -- she was in a hurry.

She called me up on the phone.

The only words that she had said to me was, "Would it be possible for you to appear in court for Paulette Anderson to testify to whatever?"

I said, "Yes."

So she said, "Well, could you come such-and-such a time?"

And here I am.

Q. She asked you to come today? A. Yes.

Q. And didn't you see Mr. Blyer before you testified? A. Yes.

Q. I take it you were not asked to sign any affidavit as to the facts -- A. No.

Q. -- that you just testified to, were you? A. No.

Q. I see.

MR. MONAT: Mr. Blyer, do you have any information that you've written down from this witness and do you contend it's your work product?

MR. BLYER: Yes, the same thing.

MR. MONAT: I would ask you, if it's okay with the Judge, to have an in-camera inspection of that document.

626 MR. BLYER: Of course (handing.)

JUDGE MALLER: I will ask the General Counsel whether this document with your handwriting -- I assume it's your handwriting --

MR. BLYER: Yes.

JUDGE MALLER: -- constitutes notes taken from your interview with the witness?

MR. BLYER: Yes, in the course of preparing her testimony for trial today.

JUDGE MALLER: You wrote this as she gave you the information?

MR. BLYER: I would say for the most part -- I won't take down -- these are my own notes.

These are not what she said necessarily, although it certainly incorporates what she said.

There are often my references, you know, to certain words that refresh my memory as to what to ask her, but they are based on what she told me.

That document was not intended to incorporate whatever she told me, rather it was intended to be used by me in order to question this witness.

JUDGE MALLER: Well, I rule that this is a work produce of counsel.

I will not require it to be submitted.

Please proceed.

627 Q. (By Mr. Monat) You started working January the 2nd. Is that your testimony? A. Yes.

Q. And when you started working, do you recall the position at that time of Joan Holland? A. Yes.

Q. What was it? A. An instructress.

Q. And Dee Arnot? A. Instructress.

Q. And then I take it you worked during that first week in January after the New Year's weekend? A. Yes, I did.

Q. Now, you would agree, wouldn't you, that in February and March, Joan Holland was the floor manager? A. Yes, I would.

Q. And you left in March? A. Yes, I did.

Q. Isn't it a fact that you frequently argued with Joan Holland? A. Not I argue with her, she argue with me.

Q. She argued with you? A. Yes.

628 Q. About what types of matters? A. I would say that's petty.

Q. Things that you regarded as petty? A. Yes, not to do exactly with work, attitude towards each other as girls.

Q. I see.

I take it then that -- and you left in March? A. Yes.

Q. I take it that at the time your employment ended you did not like Joan Holland? A. I never said I didn't like her.

I like her.

Q. You do? A. I do like her.

Q. Now, you placed the date when you were told about Joan Holland's position as at sometime in January, I believe.

A. Yes, right.

Q. Is that right? A. Yes.

Q. What date would you place it as? A. Maybe the second or third week in January.

JUDGE MALLER: Here is a calendar.

This is 1974, this one over here (indicating). See if that helps you any.

A. Maybe about the 14th.

That was the third week on a Monday in January of '74.

629

Q. It would be January 14th, you say? A. Yes.

Q. Now, do you recall any mention -- strike that.

Were you aware, Miss Murphy, at any time that Dee Arnot and Joan Holland were considered trainees of some kind?

A. Yes, I was.

Q. Okay.

When were you made aware of that? A. Well, when I had first started, Anita was in charge of running the whole floor there.

She had varied duties, so she couldn't always be there.

So when she wasn't there, Joan ran the show and Dee sort of -- was still an instructress but she was higher than others.

She would do less.

Q. Well, what was Joan doing at that time? A. She was, like, I'd say, training for floor manager.

She was in charge while Anita wasn't there, although she did not have a badge at the time.

Q. And it was up to Anita to decide if any problems came up? A. Yes.

630 Q. You understood that? A. Yes.

Q. Now, what is the reason that you seem to recall January 14th as the date that Anita Katz spoke to you and the other girls about the position of Joan Holland and Dee Arnot? A. Because you told me to pick a date, so that looks like the most obvious date to pick because that was about the third week.

Q. What makes you think it was the third week? A. Because I was there two weeks and during those two weeks, Anita was there on and off, so Joanie was in training for floor manager on and off for those two weeks.

And when the third week came up, she was given the honor of being floor manager.

Q. She was given the honor? A. Yes.

Q. Did somebody use that word, Honor? A. I would consider it being an honor.

Q. Oh.

But nobody used that word? A. No.

Q. Did you ever ask -- did you ask Joan Holland what she meant when she used the words "bad news"? A. Well, not

631 exactly bad news. It was put towards us as they're no good

for the company, not stating why they were no good just in general that they were no good for the company.

It wasn't explained.

Q. So she didn't say, "bad news"? A. No good.

Q. Now, you didn't ask her what she meant by that? A. No.

There were no questions asked.

Q. Were you curious? A. Yes, I was curious.

Q. Did you ask anyone? A. No, I didn't.

Q. Now, can you recall when Mr. Blyer first spoke to you, the question he first asked you about when Joan Holland became floor manager? A. I --

Q. How was that question first put to you? A. Just as you put it towards me, "Do you know when, about what date, or whatever?"

Q. Was any date mentioned to you at all? A. No.

He didn't hand me a calendar.

Q. No, I didn't ask you that.

632 When he asked you about the dates, did he ask you whether you recall in January that Joan Holland was made floor manager? A. Could you repeat that?

Q. Yes.

Did he ask you whether in January Joan Holland -- A. Yes, he did.

Q. -- was made floor manager? A. Yes, he did.

Q. And do you say that Dee Arnot was present at the time that Joan Holland spoke to you about the fact that they were not good? A. Yes, she was.

Q. Did you ever receive any warnings -- A. Yes, I did.

Q. -- while you were working there? A. Yes, I did.

Q. Written warnings? A. Yes, I did.

Q. For your work? A. For my consistency of being late.

Q. Lateness? A. Yes.

Q. And were you ultimately discharged from the company? A. As they put it, I left on my own free will, but I was fired.

633 Q. You felt you were fired? A. I didn't feel, I know I was fired.

* * * * *

GLENN ALAN TAUSEK

was called as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) What is your full name? A. Glenn Alan Tausek.

Q. Mr. Tausek, when do you first recall being hired by Jack LaLanne?

MR. MONAT: Could we have his address?

THE WITNESS: My address?

JUDGE MALLER: You didn't give it.

THE WITNESS: 440 Elm Drive, Roslyn, New York.

Q. Mr. Tausek, when do you recall being first employed

634 by Jack LaLanne? A. April of '73.

Q. And what job were you hired for? A. Sales.

Q. And did there come a time that that job as a salesman was changed? A. Yes.

Q. And what job were you then given? A. Floor manager.

Q. And after that, was that job changed? A. Yes.

Q. To what? A. Assistant floor manager.

Q. Now, where did you work as an assistant floor manager, what location? A. In Little Neck.

Q. And when do you recall being employed at Little Neck for the first time as an assistant floor manager? A. As assistant floor manager.

Q. Yes. A. Around the end of December, I believe it was.

Q. Of what year, please? A. '73.

Q. Are you still employed by Jack LaLanne? A. Yes, I am.

635 Q. Do you recall a --

JUDGE MALLER: In what capacity are you now employed?

THE WITNESS: I work in the health foods store on Saturdays. Juice Coordinator, it's affiliated with Jack LaLanne.

MR. BLYER: For Your Honor's identification, he described his job as the juice coordinator.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Please proceed.

Q. (By Mr. Blyer) Mr. Tausek, do you recall a conversation with Mr. Ernie Groetz, sometime after being employed at Little Neck? A. Yes, I do.

Q. Do you recall approximately when that conversation was? A. I believe it was near the end of February -- near the end of February.

Q. And who was Mr. Groetz at the time? A. He was assistant manager.

Q. Now, where did this conversation take place?

A. In his office.

636 Q. And do you remember what date?

JUDGE MALLER: Excuse me.

When you say assistant manager, you don't mean assistant floor manager, do you?

THE WITNESS: No, no.

Assistant manager.

JUDGE MALLER: Very well.

Q. (By Mr. Blyer) Who was the manager -- withdrawn.

Now, when approximately, Mr. Tausek, what time of day was that? A. In the morning.

Q. And do you remember the day itself, the day of the week? A. The day was Sunday.

Q. Now, would you please tell us what you said to him and what he said to you? A. He --

MR. MONAT: May I ask the General Counsel, before we go into that, is Mr. Groetz alleged to be a supervisor, an agent of the company, at that time?

MR. BLYER: I think that's the case.

MR. MONAT: Again I renew my prior objection of continuing to allege matters concerning supervisors or agents of the company, of which we have had no notice at all.

637 JUDGE MALLER: I assume this evidence is being offered to corroborate other evidence regarding the attitude or alleged attitude of the company as to the basis of an unfair labor allegation.

Is that correct?

MR. BLYER: Yes.

JUDGE MALLER: Objection is overruled.

Q. (By Mr. Blyer) Would you please tell us about that conversation? A. Let's see.

It was a Sunday morning. There was a 9:30 exercise class that was supposed to be given by Ray Ramos.

He was late that day. There were only two instructors on Sunday morning, that's how I know it was Sunday morning, and it was me and Richard Kaufman.

I was called to the office.

Mr. Groetz asked me to give the exercise class.

I refused to do it.

Q. Why? A. Because I was totally unprepared to give an exercise class.

You know, I said, "Why don't you let Richard Kaufman give the class? He used to give them."

He told me that he couldn't.

638 I went out and asked Richard and he said he would have given it.

I went back and he said, "No, he can't give it."

JUDGE MALLER: Who said no?

THE WITNESS: Ernie Groetz.

Q. (By Mr. Blyer) And who taught the -- was it a calisthenics class that we are talking about? A. Yes, right.

Q. Who taught that class that day? A. Somebody was brought in from Lefrak.

His name was Bob -- I don't remember his last name.

Q. Is Bob Gianguzzi -- does that ring a bell? A. I think that was his last name.

Q. Did Mr. -- did this Bob stay with the company after -- stay with the company at Douglaston after he taught the class on that Sunday? A. He went back to Lefrak, I don't know how much after, a month later or so, and then he was transferred into Little Neck.

Q. On a permanent basis or semi-permanent basis?
A. Yes.

Q. Okay.

Had you ever given a calisthenics class before then?
A. No, I hadn't.

Q. Now, do you recall Mr. Kaufman ever speaking to you
639 about getting Mr. Harry Schwartz' address? A. Yes, I I do.

Q. And can you tell -- strike that.

Did he tell you why he wanted that address?

MR. MONAT: I object, Your Honor.

JUDGE MALLER: What's the objection?

MR. MONAT: I have been precluded from going into that based on my offer of proof.

JUDGE MALLER: I'll sustain the objection.

MR. BLYER: Your Honor, I do think that, if I'm not mistaken, when Mr. Schwartz will be put on the stand, that he will testify in accordance with the offer of proof, or at least in part with the offer of proof that was proferred by Mr. Monat.

I think it would be helpful at this time if Mr. Tausek could just respond to this one question as to what Mr. Kaufman told him when he asked him to get Mr. Schwartz' address.

If not, I would like at least to make an offer of proof as to what his response would be.

JUDGE MALLER: You may make an offer of proof.

MR. BLYER: He would respond that he was asked to obtain Mr. Schwartz' address in order to provide Mr. Kaufman with an address that he could forward to members who were circulating a
640 petition among themselves which was aimed at getting Mr. Kaufman returned to the teaching of his calisthenics classes.

JUDGE MALLER: Mr. Monat, what's your response to the offer of proof?

MR. MONAT: I think the whole area is appropriate to go into in this case.

But I think if it's gone into, it's got to be gone into in all of the respects that I alleged earlier today.

JUDGE MALLER: The offer of proof is rejected.

MR. BLYER: Thank you, Your Honor.

I have no further questions of this witness.

JUDGE MALLER: You may cross-examine.

CROSS EXAMINATION

Q. (By Mr. Monat) Did you give an affidavit to the NLRB in connection with the investigation of this case? A. An affidavit?

Q. Yes.

A signed statement? A. No.

Q. Did you swear to any statement and sign it? A. No, I did not.

Q. Okay.

641 When were you first contacted by the NLRB? A. I believe it was two nights ago.

Q. Who contacted you? A. Mr. Blyer.

Q. And was that by telephone? A. Yes, it was.

Q. Was that before -- were you subpoenaed? A. Yes.

Q. You received a subpoena? A. No. There's a subpoena.

JUDGE MALLER: I don't understand.

THE WITNESS: I signed something.

MR. BLYER: He's not received -- you want me to answer it.

MR. MONAT: Go ahead.

MR. BLYER: He has not received a subpoena.

What he has signed is the same thing that Miss Murphy signed.

JUDGE MALLER: Very well.

Q. (By Mr. Monat) And Mr. Blyer asked you to come to the hearing and testify? A. Yes.

Q. Did he tell you what the hearing was about? A. Yes.

642 Q. Did he tell you what he wanted you to testify to, what areas? A. Yes.

Q. What did he tell you? A. He just asked me if I remembered an incident pertaining to -- I don't remember the word -- an incident pertaining -- I don't remember how it was worded.

Q. And incident -- A. Pertaining to the class, which I remembered on that day.

Q. Pertaining to a calisthenics class? A. Yes.

Q. Were you a full time instructor at Little Neck for any period of time? A. Yes, near the end, I was a full time instructor.

Q. What? A. First -- well, I was assistant floor manager, but there were two of us.

And I guess it needed -- they really didn't need two, so my hours were cut down.

I was an instructor then.

Q. When were your hours cut down? A. Well, it was like the weather, they changed a lot. I don't really know the dates of when.

Q. There were a lot of changes in your hours? A. Yes.

643 When I started, I think I had forty hours a week.

And when I finished, I think I had probably under ten, something like that.

You know, I was a salesman when I had all the hours.

Q. Well, after you were a salesman, what were you?

A. A floor manager.

Q. And after that? A. Then I went to Little Neck and I was assistant floor manager.

Q. Assistant floor manager? A. Yes.

Q. And after that? A. I stayed at Little Neck and I was an instructor.

Q. What were your hours when you started as instructor?

A. As an instructor?

Q. Yes. A. I really don't remember.

Q. Did they go down from when you started as an instructor?

A. Well, you see, they weren't down -- I believe when it was 32 hours, I was assistant floor manager.

And then when it went down to 30 hours, I was no longer -- I no longer had enough hours to be considered an assistant floor manager, so I was an instructor.

644 Q. And then? A. And then?

Q. Did it go down again? A. From that point?

Q. Yes. A. I believe it went down for, like, a few minutes, and then there was a discussion, and then it went up again.

(Laughter.)

It almost went down.

Q. When you started as an instructor, it was about 30 hours?

A. In the 30's.

Q. All right.

And it went down to ten at some point? A. I believe near the end it was around there, yes, something like that.

MR. MONAT: No further questions.

JUDGE MALLER: Any redirect?

REDIRECT EXAMINATION

Q. (By Mr. Blyer) What do you mean by, it went down for a couple of minutes? A. When the hours were being figured out, there was, like, going to be -- I don't remember why, but they were going to be cut down on hours.

645 I was talking to Steve Wolf. I looked at the new hour sheet and I say my hours were going to go way down.

I griped about it. Then my hours didn't go down, they went back up.

So they went down for a few minutes on paper, and then they went back up again.

* * * * *

JUDGE MALLER: Does the General Counsel rest at this time?

646 MR. BLYER: I would like to hold that open, Your Honor, because I understand we will adjourn at this time.

JUDGE MALLER: Yes.

MR. BLYER: We do have two witnesses that we subpoenaed.

We hope to have both available when we begin again.

They will not be lengthy witnesses.

During this course of the -- during the course of the adjournment, I hope to get in contact with Mr. Monat so we can work out stipulations on the supervisory issues and the business about the written document which relates to observers.

At that point, Your Honor, I think I'll be prepared to rest my case.

MR. MONAT: Your Honor, I object.

I wanted to be prepared to face all of the allegations at the end of today.

In fact, only in the last hour another name has now come up, someone named Groetz, an alleged manager.

I think it may welcome out that there will be some more names with more witnesses.

MR. BLYER: I think I can --

JUDGE MALLER: Well, let me make this clear, Mr. Monat, my position on that.

647 The mere fact that counsel is going to prove, or attempt to prove, certain corroborating evidence does not entitle you to know in advance, the names of the alleged supervisors who were supposed -- who may be attempted to be shown corroborated certain things.

You are entitled to know of any amendment alleging additional unfair labor practices.

Those were done at the start of this proceeding when counsel amended the complaint.

We are now adjourning the hearing, and you will have ample opportunity to prepare your case as to those allegations.

The mere fact that names are introduced, new names, by way of corroboration and not by way of independent unfair labor practices, is not something that would entitle you to know those names in advance.

General Counsel is not required to give you a list of whom he's going to ascribe any evidence to that might corroborate his case.

Your objection, therefore, is not well taken.

MR. MONAT: I would like to respond to that, very briefly, Your Honor, because it is a topic which I feel strongly about.

JUDGE MALLER: Apparently, you do.

MR. MONAT: We have had a situation here now, your

648 Honor, where just a guess is that there may be ten or more names that have come up, of which we were not apprised at all, as to conversations with management people.

I know the Board has always had a very restrictive policy with respect to what one might call disclosure and notice.

It's always been said that they won't give the names of employees who were allegedly coerced and that kind of thing.

Perhaps there's some basis in that.

But when it comes to being able to expedite a case and proceed as rapidly as possible -- and I'm sure the Board has an interest in that -- I really see no reason at all not to give a full disclosure to a company or even if it's a union as respondent, as to all those events and incidents and especially supervisors who are alleged to be involved and what they allegedly said.

I don't see how it can possibly prejudice General Counsel's case at all or the people involved at all and it can only lead to a better prepared case to start with so that the proceedings go much more expeditiously.

I suggest that had we been given notice of all these things much earlier, we might have been able to proceed sooner than three weeks from now.

649 I just think that there's a very restrictive and concealing policy on the part of General Counsel in these matters and there's really no warrant for it.

I think it's steeped somewhat in the dark ages.

Therefore, I press my point on that as well as other points. Thank you.

* * * * *

651 16 Court Street,
Brooklyn, New York,
Tuesday, August 13, 1974.

* * * * *

652A MR. BLYER: I would like to offer the following stipulation, that the following individuals are supervisors within the meaning of the National Labor Relations Act:

Gabrielle Schinner --

MR. MONAT: Make it Schwartz.

MR. BLYER: Gabrielle Schwartz, Anita Katz, Steve Wolf, John Wilton, Harry Schwartz, Andy Bostinto, Frank Bieler, Ray Ramos, Dennis Karf, Ernie Groetz and Barry Curtis Greenfield.

653 That is all, Your Honor.

JUDGE MALIER: Does the Respondent stipulate they are supervisors within the meaning of the Act?

MR. MONAT: The following restrictions, subject to the following as I think I have indicated to Mr. Blyer, that Steven Wolf and Frank Bieler in the initial portions of the Union organizational drive were part of that drive and the various acts that they have engaged in at that time relating to the Union organization drive we don't concede they were agents of the Respondent in performing.

JUDGE MALIER: Well now, can you arrive at a stipulation as to when they became supervisors?

MR. MONAT: They have been supervisors at all times material herein.

JUDGE MALLER: But you say because they assisted the Union drive they were not agents of the Respondent at that time?

MR. MONAT: In some respects.

In terms of certain knowledge we may have had, things of that nature.

We had filed, yes, an 8(b)(1) charge at one time claiming that the actions of these individuals in the organizational drive was a violation of the Act.

654 I just want to make that clear that we concede supervisory status but there were certain acts on their part involving charges and all the knowledge they had of what went on could be imputed to the Company.

In fact, I have had occasion to argue that point in a prior unfair labor practice case and the one thing that was brought to our attention and the Judge did agree that we were not imputed with all the knowledge at that time.

JUDGE MALLER: What period does that cover?

MR. MONAT: That would certainly be through the events of the Judge's decision which I think went through the middle or the fall at least of, approximately of 1973.

JUDGE MALLER: You agree to that, Mr. Blyer?

MR. BLYER: Let me add that up until now there wouldn't be any problem.

Mr. Monat is concerned about the imputation of knowledge of certain Union activities by certain individuals, that Wolf and Bieler may have had.

They knew that certain individuals were card signers and Mr. Monat is questioning whether or not it can be fairly imputed to the Respondent Employer.

The only thing we would introduce at this time, that we probably hold Respondent through the acts of Wolf and Bieler have been the statements to Mr. Kaufman that his hours were reduced,

655 so at this point there is no problem with regard to any knowledge issue.

It may come up, but at this point there is no problem.

All parties concede that as of early June of '73 when the organization campaign commenced that these gentlemen were in supervisory positions.

So at this point I don't think it is a real problem.

JUDGE MALLER: You agree to that, Mr. Monat?

MR. MONAT: I would certainly agree that they were acting as supervisors and acting in terms of any instructions they gave as to hours and I think that will satisfy General Counsel at this point.

MR. BLYER: At this point, it does, yes.

JUDGE MALLER: All right, the stipulation includes imputable knowledge, imputable with Respondent as of the time of the reduction of hours.

MR. MONAT: No, no, that is not the point, Your Honor.

My point is that yes, supervisors did instruct certain employees that their hours were reduced.

I'm not conceding imputation of knowledge as to these individuals and the whole company and everything that they knew.

MR. BLYER: That suffices for my purposes, that when Mr.

656 Wolf and Mr. Bieler told Mr. Kaufman and Mr. Matinnelli that their hours were reduced or their calisthenics classes were taken away, that at that time they were acting in a supervisory capacity as agents for the Respondent and I don't think Mr. Monat will quarrel with that.

JUDGE MALLER: Is that correct?

MR. MONAT: Yes, Your Honor.

One other reservation is that I believe there was certain testimony concerning conversations with Mr. Karf.

There may have been one or two others but I think Mr. Karf at the moment, and I don't concede that everything said by our supervisors was necessarily within the scope of their authority as agents.

But they certainly were supervisors, all these people that Mr. Blyer mentioned.

JUDGE MALLER: What specifically do you have reference to?

MR. MONAT: I am thinking there was a conversation alleged to have been made by Mr. Karf to the effect of hours and that he would give certain hours even without clearing it with Mr. Schwartz or something to that effect.

That conversation, if credited, might well be outside the scope of his authority.

I am reserving the right to argue that point.

657 That is all I'm saying here.

JUDGE MALLER: All right.

MR. BLYER: That is all, I have, Your Honor.

JUDGE MALLER: You may proceed.

MR. BLYER: Ms. Brezenoff.

Whereupon,

ELLEN BREZENOFF

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn by Judge Maller, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) Will you state and spell your full name? A. Ellen, E-l-l-e-n, Ronnie, R-o-n-n-i-e, Brezenoff, B-r-e-z-e-n-o-f-f.

Q. Ms. Brezenoff, when did you begin working for Jack LaLanne? A. In December, '72.

Q. Did there come a time that you stopped working for them? A. In April, '73 I had stopped.

Q. Thereafter did you again become employed by Jack LaLanne? A. Right, the end of August, '73.

Q. When you were re-employed in August of '73 what
658 position were you employed as? A. Instructress, dance teacher.

JUDGE MALLER: Are you still employed by them?

THE WITNESS: No.

JUDGE MALLER: When did you cease being employed?

THE WITNESS: In the end of December, '73.

JUDGE MALLER: Did you leave voluntarily?

THE WITNESS: Yes, I had to go to the hospital for a tonsillectomy.

Q. (By Mr. Blyer) In mid-December, 1973, at the time of the Union election, what position were you holding at Jack LaLanne? A. In December? I was trying for floor manager.

Q. What location were you working at? A. Douglaston.

Q. Do you recall at the time of the election in mid-December, 1973 a conversation with Anita Katz regarding Debra Caron and Paullette Anderson? A. Yes.

Q. Where did that conversation take place? A. In the gym.

Q. What did she say to you?

Was anyone present? A. No.

JUDGE MALLER: Who was that conversation with?

659 THE WITNESS: Anita and myself.

Q. What did she say to you and what did you say to her? A. Just that Debbie Caron and Paulette Anderson were involved in the Union and had bad attitudes and I should not involve myself with them.

JUDGE MALLER: I'm sorry, I can't hear you. Could you repeat that?

THE WITNESS: Debbie Caron and Paulette Anderson had bad attitudes and were involved in the Union and I should not involve myself with them.

Q. Did Anita Katz say anything else to you that you can recall during this conversation? A. At that present time?

Q. Yes. A. No.

Q. Did she tell you why she thought it was a good idea why you should not get involved with them? A. Yes, to keep my record clean, just to not get a bad attitude about the Company, just not to associate in those terms.

Q. Did she also speak about any of the other girls who were working at Jack LaLanne at the time? A. At that present we had some new instructresses and she also didn't want to get them in-

660 volved with anything that the Union or bad attitudes to the Company and that I should try to separate that.

Q. Try to separate what? A. The girls involving themselves with Debbie and Paulette.

Q. Did you say anything to Anita Katz after she told you these things? A. No, at that time I just did what I was supposed to do.

Q. In the days after the election in mid-December, 1973, did you again have a conversation with Anita Katz regarding Paulette Anderson and Debra Caron? A. After the election?

Q. Right. A. Right, that I was to keep Paulette and Debbie busy on the floor and give them members to work with.

Q. Anything else relating to what else you were supposed to give them to do?

Did she tell you to do anything else with regard to Caron and Anderson other than giving them members to work with?
A. At night we usually do clean up and we all clean the gym outselves, and I was instructed to make sure that Debbie Caron and Paulette Anderson did most of the work.

661 Q. When you said to keep them busy on the floor what do you mean by that, when she told you that? A. Well, we take members around on the floor through their exercise program, and there are other instructresses and if someone came in I was to give them to Debbie Caron and Paulette Anderson to keep them busy.

Q. What about the other instructresses, did she tell you anything with regard to them, about giving them new people as they came in? A. First keep Debbie and Paulette busy and make sure they were doing whatever they were supposed to do and if there was an overflow then I would give them to the other instructresses.

Q. During this period of time who was the floor manager?
A. Well, Anita was coming in most of the time and working on the floor, you know, assigning cards and classes, and when she was out busy in the offices or whatever I would run the floor for her.

Q. Who would do the assigning of the calisthenics classes during this period? A. Mostly Anita.

Q. Did you notice during this period of time after Anita Katz gave you these instructions what happened with regard to the
662 amount of cleaning work that Anderson and Caron were given?

MR. MONAT: I object.

JUDGE MALLER: Overruled.

Q. You can answer the question.

Did you notice what happened with regard to the amount of cleaning work that they were given? A. Yes, they were doing more than they would normally do, I would say.

Q. Who was assigning them that work? A. I was.

Q. Anyone else assigning them to that work? A. Well, I was told to assign them work so I did.

Q. Who told you to tell them? A. Anita.

Q. How about this matter with the number of members that they were working with on the floor during this period of time, what did you observe? A. Well, we basically have three types of programs, reducing program, hip and thigh programs and limitation programs.

JUDGE MALLER: What was the last one?

THE WITNESS: Limitation.

JUDGE MALLER: What does that mean?

THE WITNESS: Someone who has like a bad back and can't exercise on any sort of basis.

663 I was giving mostly Debbie and Paulette the reducing programs because most of our members are on reducing programs.

Q. Was this the practice in the past, to give Debbie and Paulette most of the people who were on reducing programs?
A. No, we all used to take turns.

Q. Who told you to give them, if anyone, who told you to give them these extra classes? A. Anita.

JUDGE MALLER: Please keep your voice up.

THE WITNESS: Oh, Anita.

Q. Do you recall on the first day of the election, December 12th, a Wednesday, a telephone call from Debra Caron to you?
A. Yes, I do.

Q. Where were you at the time? A. In the office, right outside of the gym.

JUDGE MALLER: I missed that date. What was it?

MR. BLYER: December 12th.

JUDGE MALLER: Thank you.

Q. (By Mr. Blyer) What was the conversation between you and Debra Caron? A. Debra had told me that she had to be observing the election in other health spas and she wouldn't be able
664 to come to work, she would try to but she didn't feel she ought to.

Paulette would not be coming to work and that I should relay the message to Anita.

Q. What did you do? A. I relayed the message to Anita.

Q. When did you do that? A. Right after the phone conversation.

She was in the gym and I went in and I told her.

Q. Do you recall on the following Monday, Debra Caron coming to work? A. Yes.

MR. MONAT: Monday following what?

Will you be more specific?

MR. BLYER: I thought I was.

December 12th was a Wednesday so the following Monday would be about the 17th.

JUDGE MALLER: This is '73 we are talking about?

MR. BLYER: Yes.

JUDGE MALLER: It would be the 17th of December.

Q. (By Mr. Blyer) Did you see Debra Caron at work that day on the 17th? A. That evening she came in at nights.

Q. Did you see her go in to Anita Katz' office that evening?

665 A. Yes.

Q. No, after she left the office do you recall being called into Anita Katz' office? A. Yes.

Q. Was anyone else there? A. No.

Q. Would you tell us the conversation? A. Anita had said if anything comes up about the phone conversation that I should tell whoever was asking that I didn't speak to Anita about her not coming in the previous Wednesday, that I never relayed the message to Anita.

Q. Who are you talking about now, what message? A. The message that Debbie had called to tell me she wasn't coming in, that I had never relayed that message to Anita.

Q. What did you tell her when she told you to say that if anyone asked? A. I told her I really don't like lying and if it came up in conversation I would try to avoid it to the best I could.

MR. BLYER: Thank you very much, Ms. Brezenoff I have no further questions.

JUDGE MALLER: You may cross-examine.

MR. MONAT: Did General Counsel take any statement

666 from this witness?

MR. BLYER: Yes, I have an affidavit.

JUDGE MALLER: We will take a brief recess to enable Counsel to examine the affidavit.

(Whereupon, a short recess was taken.)

JUDGE MALLER: On the record.

CROSS EXAMINATION

Q. (By Mr. Monat) Ms. Brezenoff, did you give your address? I'm not sure I got that. A. I'm living in Jersey now.

Q. Can you just give us the address? A. 25 Macopin Court, Livingston, New Jersey.

Q. When were you informed that you were a trainee for a floor manager position? A. Nancy, I don't remember her last name, was the floor manager at that time and she was going to be leaving, she had another job, and I was going to be taking her place and training to take it over.

I think that was around November sometime.

Q. Do you remember that Nancy DeMasi left at the end of November; do you remember that? A. Yes.

Q. And that Anita Katz, in addition to her other job of being at all the gyms was also working at Little Neck because they
667 didn't have a floor manager for a period of time?
A. Right.

Q. Wasn't it Anita Katz who was in charge and had the authority to decide what to do on the gym floor? A. Sure.

Q. Do you recall when the Union election was held?
A. The second week of December, about the 12th, 13th, around there.

Q. What was the date of your first conversation with Anita Katz when she said something about the bad attitudes of Debbie Caron and Paulette Anderson? A. Prior to the election.

Q. What date? A. I really don't recall the specific date.

Q. What is the best you can place it? A. All I know is when I came back to work and there was this thing with the Union coming about, that I was informed that Debbie and Paulette were involved in it and that I --

Q. When did you come back to work? A. The end of August.

Q. Could Anita Katz have talked to you at the end of August? A. No, I think it started getting heavy in November.

Q. Do you think she spoke to you in November?

68 A. End of November, middle of November.

Q. You think it was the end of November that she spoke to you about Debbie Caron and Paulette Anderson? A. About bad attitudes?

Q. Yes? A. Yes, about there.

Q. You say the end of November.

Could it have been the beginning of November? A. No, I think it was towards the mid to end of November.

Q. Was Nancy DeMasi still working there at the time? A. She was just about to leave so it was right around when she left.

Q. How long was your conversation at that time with Anita Katz? A. You mean in time sequence? Five minutes, ten minutes.

Q. Yes, how long? A. Not long, just general -- within the day's work she came out and said that.

Q. Where were you talking to her? A. In the gym.

Q. Did she threaten you at all? A. Threaten me? Meaning what?

9 Q. Make any threats of any kind to you? A. No.

Q. Did you know Debbie Caron and Paulette Anderson from your work? A. From before, yes. They were working there when I started in December of '73.

Q. What did you say to Anita in this conversation?
A. Nothing.

I listened to what she said to me and I abided by it.

Q. You didn't make any comment? A. Not that I recall.

Q. Didn't express your view at all? A. As far as whether or not I should speak to them or associate with them?

I don't understand what you are saying.

Q. Did you say anything else to Anita at all? A. At that particular time?

Q. Yes. A. No.

Q. Were you friendly with Debbie Caron and Paulette Anderson? A. Yes, I knew them from before when I originally started working.

Q. Did you stop talking to them after Anita spoke to you?
670 A. When Anita was there.

Q. What about when she wasn't there? A. I was friendly with them from the year before then and to completely stop conversation would not be within my personality.

Q. Well did she say you should stop talking to them?
A. Stop associating with them or being friendly, outside of activities with them.

Q. When did your problem with the tonsillitis start?
A. A long time ago.

I had the problem for about a year and a half.

Q. When did it get severe where you kind of knew you would go to a hospital? A. Originally it had gone severe the first time I was working and I didn't go into the hospital.

That was in '73.

In November I then got another serious attack of tonsillitis and I had to go in for my operation. The doctor said as soon as it cleared up.

Q. You said that there was another conversation with Anita Katz after the election in mid-December.

What is the date of that conversation? A. The next day maybe. The next Friday it would have been because we don't work on Thursdays. I don't work on Thursdays.

671 Q. At that time, in and around the period of the election were Paulette Anderson and Debbie Caron the more experienced of the part timers? A. At that particular time there were four of us that were experienced in the gym.

Q. Who else? A. Elicia -- I don't know her last name.

Q. Grasso? A. I have no idea of her last name.

She had worked at Lefrak City before she moved to Douglaston and I think she may have started somewhere around April of '73, I'm not sure.

But when I came back she was there for a while.

Q. You gave an affidavit.

Do you know who took this affidavit that you gave? A. It was on the phone, no.

Q. Who first contacted you from the N.L.R.B., with regard to giving information in this case? A. I really don't remember.

I didn't ask a name. I was just told that it was somewhere from the Labor Board in regard to Paulette Anderson and he had some questions for me to answer.

Q. Were you mailed an affidavit to sign? A. Yes.

672 Q. Did you assign calisthenics classes? A. Sometimes during the day I did but at night when it got busy mostly Anita would assign the classes and if she wasn't there I would then assume the position.

Q. In the period between December 15th and December 31st, 1973 did you assign any calisthenics classes? A. Possibly.

Q. You don't recall? A. Precisely assigned one night or two nights, you know, it is possible.

Q. You have no specific recollection of assigning classes during that period of time? A. At that time, most of the time I would say Anita assigned classes.

Q. What about assigning cleaning duties at that time? A. That, I did that

Q. You assigned cleaning duties? A. Yes.

Q. Between the period December 15th and December 31st did you assign Debbie Caron cleaning duties? A. Yes, I did.

Q. How many times, how many nights would you say you assigned her cleaning duties during that period of time? A. We did cleaning every night that we were there which was Monday,

673 Wednesday, Friday and Sundays, and there were certain things that had to be done like mirrors, vacuuming, whatever it is, and that is what they would be assigned to do.

Q. You spoke to Anita Katz you say the day after the election, approximately.

What is the first date thereafter that you gave any cleaning duties to Debbie Caron? A. That night probably I would imagine.

Q. What did you tell her to do? A. Specifically?

You got me. Generally what Paulette --

Q. Do you recall specifically what you told her to do at that time? A. No, but I know what generally they would do of the details that were done.

I know what areas they would work on.

Q. Do you recall any particular night that you could place any time or day that you assigned cleaning duties to Debbie Caron? A. Yes.

Q. Which night would that be?

Give me a date. A. The following Monday and Wednesday afterwards.

Q. Monday do you recall? A. Monday and Wednesday, right.

674 Q. What did you tell Debbie Caron to do on that date?

A. She would usually do mirrors in the gym, the chrome.

Q. I want to know what you told her? A. If you want my specific word for word --

Q. Ms. Brezenoff, you testified that you have given this girl additional cleaning duties and I want to know the dates on which you told her to do.

It is important to the case, not a casual matter. A. Fine.

What we do do, take mirrors, vacuuming, chrome, leather, ballet room and I would assign usually everyone to do one.

Those particular times, after the election, every evening I would have Debbie and Paulette do more of the cleaning than anyone else, whether it was, you know, the vacuuming and the mirrors, who remembers?

But they would have out of all of them more to do than I would do or one of the other girls would do.

Q. I want to know what did you give Debbie Caron to do?

You can't tell us exactly? A. Mirrors, the vacuuming, the chrome, the leather, the ballet room, cleaning bicycles.

675 Q. What did Paulette do? A. One day I had Debbie clean bicycles around the spokes and things -- the ledges on the walls.

Q. Is this the one you are talking about, December 17th?

A. Could have been Monday or Wednesday. It is every evening we would do cleaning so I don't remember which day they did which item.

Q. Well, did both Debbie and Paulette do mirrors, vacuuming, chrome, ballet and bicycles together? A. Sometimes yes, most of the time.

Q. What work did you assign the other girls? A. Maybe one would just vacuum and they would do everything else, maybe one would do the ballet room and they would do everything else or something like that.

Q. Did the vacuuming involve vacuuming the ballet room and main gym? A. Depending. I would have one vacuum in the main gym and one vacuum in the ballet room.

Q. I want to know on the nights they didn't get vacuuming who got vacuuming? A. Excuse me?

Q. Sometimes you said you did not give any vacuuming to -- A. Paulette and Debbie.

676 Q. Who did the vacuuming? A. I could have done it.

Elicia could have done it, Joan could have done it. It could have been anybody.

I don't remember who specifically did the vacuuming on which evenings.

Q. Can you be any more specific on the dates than you have been? A. All I know is that every evening there is a certain amount of cleaning that should be done and every evening it was done.

Q. Would you say that this went on for a period of six or eight weeks? A. I wasn't there that long.

Q. When did you leave? A. The end of December. I had to go into the hospital.

Q. Do you know Rolinda Antone? A. Yes.

Q. Was she working at that time? A. Right, she was a part time worker. She came in about 5:00 or 6:00 in the evening.

Q. Did she do any cleaning work? A. A little.

I would give her as little -- sometimes she did none because sometimes she left earlier.

677 Instead of staying till 10:00, she would leave at 9:30 or 9:00 so she didn't do that much.

Q. Why did she leave at 9:00? A. Those were her hours.

I didn't make hours. It would get slow at 9:00 so some of the part time would leave.

Q. Didn't Caron and Paulette work until 9:00? A. 9:30 I think it was.

No, it was 9:00 o'clock, unless we had a meeting or something, then they stayed later.

Q. Do you recall that customers had to be out of the gym by about 9:30? A. Right, the gym usually gets emptied though about 9:00 o'clock.

Q. 9:00 o'clock? A. Yes, but the gym is not closed until 9:30. Is that what you asked me?

Q. The customers have to leave about 9:30? A. Right, but it is usually empty by 9:00.

Q. You also assign program cards; is that right? A. Yes.

Q. Are your customers scheduled to come in at specific times? A. No.

678 Q. Would you stand at the desk all evening to give out program cards? Is that what you did? A. No, one of the other girls would stand at the desk.

I would then take the cards from the desk and then bring them over to each instructresses, depending on who was taking what, go back and take them and put them in the basket and go back and pick up, you know, ones and I was floating around.

Q. What else did you do besides that?

Didn't you do instructress work yourself? A. While you are acting as floor manager or running the floor you cannot take people through a program, no, because you are too busy giving out -- you are too busy organizing everything.

Q. How many days were there between December 15th and the 31st where you were working as floor manager? A. At that time Anita was very busy in the offices and doing other things, and if she was not in the gym I was doing it every evening.

If she would come in for an hour let us say during a rush and put me on the floor I would work on the floor. and she would do it, but then she went out I would then resume doing floor manager work.

Q. How many days would you say between -- A. Every
679 evening at different times I would at least run the floor for sometime.

Q. Every evening that you worked? A. At least for some time. Maybe an hour, maybe two hours, maybe she came in for three hours, I worked one hour, but at one time or another every evening I was helping on the floor.

Q. Is it your testimony that every one stood around and only Debbie and Paulette -- A. I didn't say everyone stood around.

I said that I gave them mostly reducing cards which is our main body of members.

I would maybe give Rolinda green cards where she would have one or two because we kept them separate.

Someone would work with all of the green cards, someone would work with all of the white cards and someone would work with orange cards.

Q. Did Debbie and Paulette say anything to you about this?
A. Possibly. Exact words I couldn't say to you.

Q. You don't recall? A. No.

Q. Did they ever say to you, "Ellen, why are you giving us all this work?" A. All of them knew that Anita was --

680 Q. Did they ever say that to you? A. In those specific words, no, but in something like that, yes.

They approached me and said, "Well, how come she is not taking orange cards around?"

Q. How many times did this happen that they said that to you? A. Well, when I explained the situation, that I was doing what I had to do, then they understood it and just did what I gave them.

Q. How many times did they protest to you? A. Maybe once or twice.

Q. Did you make Debbie and Paulette stay after 9:00 o'clock during this period of time in December? A. Not unless I was instructed to.

Q. Did you make them stay past 9:00 o'clock, yes or no?
A. If we had a meeting, yes.

If we didn't, no. I don't know, I don't know specific dates.

Can I say something in reference to this whole thing?

Q. No.

JUDGE MALLER: Just answer questions, please.

Q. Did you work on Sundays? A. Yes, I did.

681 Q. Let us turn to December 16th.

That is the Sunday after the election. A. Right afterwards.

Q. So you know what time I'm talking about, right?
A. Yes.

Q. You remember there was an election? A. Yes.

Q. Were you giving out program cards on that day or was Anita Katz? A. Sundays she didn't really come in.

I don't know if that was the Sunday she came in or not, but basically Anita does not work on Sundays and I run the floor.

Q. That Sunday were you running the floor? A. Again, I will say she came in some Sundays.

I don't recollect that particular Sunday was one of the Sundays that she was in.

Q. Did you give Paulette Anderson 20 cards all at once on that Sunday? A. Could be possible. We get a very large --

Q. Do you specifically recall? A. How many cards it was? No.

I will say that on Sundays at 1:00 o'clock there is a big rush that comes in and whoever is having reducing cards would have at least 15 cards in their hand.

682 I don't know if they will go to 20, 21, 22 but it is a large amount of people that walk in at 1:00 o'clock, yes.

Q. Did you ever have that many when you were an instructress? A. Sure, all of us have had a lot at one time or another.

Q. Now, you were subpoenaed to testify here? A. Yes, sir.

Q. Was there a Court proceeding to compel your testimony? A. I don't understand what you mean.

MR. MONAT: Nothing else, Your Honor.

JUDGE MALLER: Any redirect?

REDIRECT EXAMINATION

Q. (By Mr. Blyer) During this period from mid-December until the time that you left to go to the hospital, at any time during

the days that you were working did you yourself do cleaning work?
A. Yes, very definitely.

What had happened a couple of times, as I would begin to do work and I was told not to do it, to give it to them to do.

Q. Who is them? A. Paulette and Debbie.

683 Q. Who would tell you that? A. My supervisor, Anita.

MR. BLYER: I have nothing further, Your Honor.

JUDGE MALLER: Very well, thank you, Ms. Brezenoff, you are excused.

MR. BLYER: Your Honor, General Counsel rests.

JUDGE MALLER: The Respondent?

MR. MONAT: May I have a moment, Your Honor?

JUDGE MALLER: Very well.

(Short recess taken.)

JUDGE MALLER: The hearing will be in order. The Respondent may proceed.

MR. MONAT: I would like to call Paulette Anderson.

JUDGE MALLER: You have been previously sworn and you are still under oath.

Whereupon,

PAULETTE ANDERSON

having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Ms. Anderson, you recall that Richard Kaufman gave certain testimony about a conversation he had with Mr. Harry Schwartz? A. Yes, I do.

684 Q. Isn't it a fact that Mr. Kaufman related to you conversation he did have with Harry Schwartz? A. Yes, he did.

Q. Isn't it true that Mr. Kaufman told you that at the end of that conversation Harry Schwartz said that as far as he was concerned it was all water under the bridge?

MR. BLYER: Objection, Your Honor, hearsay.

MR. MONAT: Your Honor, I offer this for statements inconsistent with Mr. Kaufman's testimony.

JUDGE MALLER: Overruled.

MR. MONAT: Could we have that question read back?

JUDGE MALLER: Please.

(The pending question read by the Reporter.)

A. I don't remember whether Richard told me that or whether those were my words, but I do remember that that is what I told Mr. Rosen.

Q. Isn't it a fact that in your affidavit you did say that?

A. Yes.

Q. Richard Kaufman told you that at the end of that conversation he had with Mr. Schwartz it was all water under the bridge?

A. Right. I don't know though --

Q. That is how you remembered it? A. That is what I said.

685 I don't remember if those are my words or Richard Kaufman's.

Q. This is how you put it in your sworn statement to the N.L.R.B.? A. Right.

Q. Ms. Anderson, I believe you testified earlier in this proceeding that you -- I would like to mark a document as Respondent's Exhibit No. 7.

(The document above-referred to was marked Respondent's Exhibit No. 7 for identification.)

JUDGE MALLER: What is this document?

MR. MONAT: I will ask the witness to identify it.

Q. (By Mr. Monat) Ms. Anderson, you previously testified, I believe, that you prepared a certain document on March 25th which you presented to Mr. Wilton and Joan Holland and you signed it and they signed it? A. Yes.

Q. Is this the original of that document? A. Yes, looks like the original.

JUDGE MALLER: I am still asking what does it purport to be?

MR. MONAT: It indicates that her services are terminated. The one we have before was unclear and I would like, if there
686 is not objection, to use the original in evidence.

JUDGE MALLER: Is this in lieu of -- you said it has been admitted before?

MR. MONAT: I don't think I offered it before.

JUDGE MALLER: Was this Respondent 5 originally?

MR. BLYER: Yes.

MR. MONAT: I think so.

JUDGE MALLER: All right.

MR. BLYER: I have no objection.

JUDGE MALLER: You are offering it at this time?

MR. MONAT: Yes, Your Honor.

JUDGE MALLER: Very well, it is received in evidence.

(The document above-referred to heretofore marked Respondent's Exhibit No. 7, was received in evidence.)

JUDGE MALLER: I am not sure on some of the inter-delineations.

MR. MONAT: I will have her explain that.

Q. (By Mr. Monat) Ms. Anderson, would you just read to us the portion that is written in there. A. It states that my services are no longer needed at the Little -- I think it says Little Neck, are no longer needed and then it has my initials and John Wilton's initials.

He was the manager at that time.

* * * * *

687 ANITA KATZ

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mrs. Katz, would you state your name and address, please? A. Anita Katz, 162-41 Powells Cove Boulevard, Whitestone, New York.

Q. What is your position with the Company? A. I am an assistant service supervisor for the Company.

Q. How long have you held that position? A. I have held that position for almost two years now.

Q. How long have you been employed by the Company? A. Three and a half years.

Q. What do your duties generally encompass as assistant
688 service supervisor? A. I'm responsible for hiring the staff, training the staff, making sure that the members are taken care of properly, making sure that the instructresses work properly, teach the classes properly, program and measure the members in the proper manner, scheduling the staff, making sure that there is enough people on the floor to work with the members, and generally overseeing all the service on the gym floor.

Q. Was that also your function back in the period of October, November, December and January of 1973 and '4? A. Yes, it was.

Q. Would you just tell us as of December, 1973 what were the gyms that came within the Jack LaLanne organization, the locations? A. We had 10 gyms at that point.

Do you want me to name the gyms?

Q. Yes, please do and just give us the locations. A. We had two gyms in Brooklyn.

One was the Kings Highway gym which is on Kings Highway and Coney Island Avenue.

One is the Flatbush gym which is on Flatbush Avenue and Avenue U.

We have two in Queens. One at Lefrak City and one as referred to as the Little Neck gym in Douglaston.

We have one in Woodmere which is out on the Island.

We have one in New Jersey, Fort Lee, New Jersey, referred to as the Fort Lee gym, and in Manhattan we have one at the City Hall area which is referred to as the Executive Club.

One on Madison Avenue and 55th Street which is referred to as the Madison Avenue Club, one at the Biltmore and 43rd Street which is at the Biltmore Hotel, one on 86th Street off Lexington Avenue which is referred to as the 86th Street Club.

I believe that covers all of them.

Q. Is there an eleventh club now? A. Yes, we have another club now on 53rd Street and Fifth Avenue which is referred to as the Fifth Avenue Spa.

Q. Have these gyms always been under your jurisdiction as assistant service supervisor? A. Yes, they have.

Q. Do you recall a woman named Nancy DeMasi who worked at Little Neck? A. Yes, I do.

Q. Do you recall what her position was? A. Yes, she was floor manager.

Q. Do you recall when she left? A. Yes, the week ending
690 November 30th was her last week.

Q. Did you have anyone immediately who filled that position? A. No, I did not.

Q. Did you assume any duties with respect to Little Neck as well as your other functions? A. Yes, I did.

Q. What duties were those? A. I was the floor manager at the time.

Q. At the same time as you continued to perform your other functions as well? A. Yes, that is correct.

Q. For what period of time did you continue to perform a dual function of both being assistant service supervisor and floor manager at Little Neck? A. During the entire month of December, all of January and a small portion of February.

Q. Are there certain days known as women days and others as men days at the gyms? A. Yes.

Q. Particularly at Little Neck what were the men's days and the women's days as of December '73, do you know?
A. Yes, the women's days were Monday, Wednesday and Friday from 10:00 to 10:00 and Sunday from 1:00 to 5:00.

691 Q. And the men's days? A. Tuesday and Thursday from 10:00 to 10:00, Saturday from 9:00 to 6:00 and Sunday from 9:00 to 1:00.

Q. I believe you were here when Ellen Brezenoff testified this morning? A. Yes, I was.

Q. Were you aware of any problems of any problems she had with her tonsils back in December? A. Yes.

Q. Of '73? A. That's right.

Q. Would you tell us what was the nature of her difficulty and how that affected her work, if at all? A. Yes, I will.

Unfortunately Ellen had been qui e ill with tonsillitis and was unable to teach her classes properly because she couldn't use her voice.

She was unable to take many workouts through because of the same problem with her voice.

She was also out sick considerably because of her tonsillitis and many times she did come in and she would wind up lying down in the nursery or downstairs in the locker room because she was not really feeling well.

There were times that she would come in when she had fever
692 which we appreciated very much, and she just could not function the way she normally would function.

Q. Just briefly, did that have anything to do with her ultimately leaving? A. Most definitely.

Q. Do you recall that there was a Union election on December 12th and 13th I believe it was, Wednesday and Thursday? A. Yes, I do.

Q. Did you receive on December 12th any phone call from Paulette Anderson? A. Yes, I did.

Q. Do you recall what she said to you? A. Yes, she called me early in the day and said that she would be unable to report to work as scheduled, due to the fact that she would be an observer for the Union.

Q. Did you receive any such call from Debbie Caron? A. No, I did not.

MR. MONAT: I would like to mark a document as Respondent's Exhibit No. 8.

(The document above-referred to was marked Respondent's Exhibit No. 8 for identification.)

Q. Will you tell us what that document is? A. Yes, those are the rules and regulations that our instructresses receive when they begin working with us.

693 Q. Are those rules and regulations enforced? A. Yes, they most definitely are.

Q. When are employees given that particular document, if at all? A. When they are hired.

Q. Are they made aware of the rules in there at any time after they are hired? A. Yes, they are.

Q. How would they be made aware? A. The floor manager will constantly review the rules and regulations with them.

Q. Is there any rules in there with reference to calling in if you are going to be absent and, if so, would you just point it out to us? A. Yes, there is, Rule Number 7.

JUDGE MALLER: Read it, please.

THE WITNESS: Certainly.

All part time instructresses have to notify the floor manager before 1:00 P.M., if they cannot come to work the same day they are scheduled.

All full time instructresses have to call the floor manager by 10:00 A.M., or call her at home if they cannot come in the same day.

Never leave any message, always speak to your floor manager directly.

694 Q. While on this document, is there any rule on use of profanity and, if so, could you indicate that rule? A. Yes, Rule Number 13.

JUDGE MALLER: Read it, please.

THE WITNESS: Speak good and clean language and instructresses using profane language, even in a joke will be terminated immediately.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Q. (By Mr. Monat) What is the rationale for the rule on calling in, Mrs. Katz? A. Well, it is very important for the floor manager to know if any member of her staff is going to be late or out sick.

Since we are in the service business it is most important that the members are serviced promptly.

If there is a shortage in help due to the fact that a girl is out ill or unable to report to work the floor manager will then have to call another gym or additional girls to see if they can replace that girl for the evening.

Q. Is it sufficient for the employee to call the receptionist?

695 A. Not at all.

Q. Why not? A. The receptionist has income calls all day long and she cannot receive a call from an instructress relaying a message to someone else.

She just couldn't handle it.

Q. Was Ellen Brezenoff a floor manager? A. No, she was not.

Q. Did you ever receive any call from Debbie Caron that she was not coming in on December 12th? A. No, I did not.

Q. Did you receive any notice that she had called in from anyone? A. No, I did not.

Q. While you were floor manager do you recall if anyone called you when they were going to be out for any reason, sick otherwise? A. Yes, I do.

Q. Could you tell us who if you recall any people? A. Yes, Ellen had been out sick at one point and she called me in the morning.

Jean Murphy had been sick at one point and called me.

Rolinda Antone had been out sick one evening and also called me.

696 Q. They spoke directly to you? A. Yes.

MR. MONAT: Off the record.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: We will take a recess.

(Short recess taken.)

JUDGE MALLER: The hearing will be in order.

MR. MONAT: I would like to mark a document as Exhibit No. 9 and I would like to indicate that I believe we have furnished General Counsel for purposes of his following this testimony the originals of these particular documents.

JUDGE MALLER: This is a copy?

MR. MONAT: Yes, Your Honor.

JUDGE MALLER: A photostatic copy?

MR. MONAT: Yes, it is.

Q. (By Mr. Monat) Mrs. Katz, would you identify what those documents are and tell us what period of time they cover? A. Yes, they are -- these are copies of our payroll records.

Q. For which gym? A. For the Little Neck Gym.

697 Q. For what group of employees? A. Females, and they cover the week ending 11/30 to the week ending February 27, 1974.

Q. What day of the week?

JUDGE MALLER: 11/30 to when?

THE WITNESS: February 22nd, '74.

Q. What day of the week does your payroll period end? A. On Friday.

Q. Who prepares your payroll records? A. The floor managers in each gym prepare it.

Q. How often are they prepared?

When is the information on these records filled out? A. It is prepared daily by the floor manager.

Q. What happens at the end of the week? A. At the end of the week the hours of the employee are totalled up and the payroll is sent into the main office.

Q. Are salaries calculated from these sheets? A. Yes, they are.

Q. Are employees paid based on the information on these sheets? A. Yes.

Q. Do you know who made the copies, these copies? A. Yes, I did.

Q. Did you make them from the originals? A. Yes, yes, I did.

698 Q. To your knowledge are they accurate and true copies of the originals? A. Yes, they are.

Q. Would you indicate for us, using the payroll records, when the last time was that Debbie Caron worked prior to December 12th? A. She worked Monday, December 10th.

Q. And thereafter what is the first date that she again worked at Little Neck, according to the payroll records?
A. According to the payroll records she worked on Wednesday, the 19th of December was the next date.

JUDGE MALLER: I would like the exhibits, please. Who has the exhibits that are in evidence?

Proceed.

Q. (By Mr. Monat) December 19th was the first day thereafter that she worked? A. That's right.

Q. On December 17th did you have any telephone conversation with Debbie Caron? A. Yes, I did.

Q. What time was it? A. Debbie had called me early in the morning.

Q. Approximately what time? A. I would say it was before 1:00 o'clock.

699 Q. What did she say to you? A. She said that she would possibly be unable to attend work that evening due to the fact that we had a storm of some sort, and if she was not there she would call, letting me know that she definitely would not be in.

Otherwise to expect her.

Q. Did she call you later that day? A. No, she did not.

Q. Did she come into work? A. No, she did not.

Q. Did you receive calls from any other employees?
A. Yes, I did.

Q. What did they tell you, if anything? A. They told me that they were unable to come into work.

Q. Do you recall which employees they were? A. Yes, I do.

Q. Who? A. Rolinda Antone called, Susan Jonkowski called and Paulette Anderson called.

Q. Did you expect Debbie Caron to come in at 6:00 o'clock? A. Yes, I did.

700 Q. Did she come in? A. No, she did not.

MR. MONAT: I would like to identify a document as Respondent's Exhibit No. 10.

(Documents were marked Respondent's Exhibit Nos. 9 and 10 for identification.)

Q. (By Mr. Monat) After your phone call of December 17th when was the first time that you saw or spoke to Debbie Caron? A. Wednesday night, December 19th.

Q. Did you speak to her at that time? A. Yes, I did.

Q. Where? A. In the office.

Q. What did you say to her and what did she say to you? A. Well, I spoke to Debbie in reference to the fact that she did not call me when she said she was going to on Monday, nor did she show up to work.

I was annoyed at the fact that she didn't think it was important enough.

Also the prior week, the week of the election, I never heard from Debbie and this was unlike her not to call.

She knew what the rules and regulations were.

701 She never called and never showed up to work and we were quite busy that night and I had no indication and she just didn't come to work and I was annoyed about the general principle that she was following.

Q. What did she say? A. She claimed that she did call and I asked her why she didn't speak to me and she said she had tried to reach me but was unable to.

As far as the Monday night, December 17th, she didn't have any kind of response to that whatsoever.

Q. What did you say? A. Once again I was upset with Debbie because this was not the usual action that Debbie had done in the past, and I spoke to her about it and felt it was necessary under these conditions to issue her a warning notice.

Q. Would you identify Respondent's Exhibit No. 10 and tell us what it is? A. Yes, this is an employee warning notice.

Q. Did you fill out that document? A. Yes, I did.

Q. Is that your signature on the bottom? A. Yes, it is.

MR. MONAT: At this point I would like to offer Respondent's Exhibits 8, 9 and 10 in evidence.

Number 9 will be used further in the course of the proceeding.

702 JUDGE MALLER: Is there any objection.

MR. BLYER: Your Honor, I would like to make sure I know what we are talking about.

What was nine?

MR. MONAT: Nine is the payroll that you have.

MR. BLYER: And ten?

MR. MONAT: Ten is the warning?

Eight is --

MR. BLYER: Can I see the original warning notice?

Thank you.

You are offering all the payroll records even though you didn't refer to all of them?

MR. MONAT: Yes, subject to further elaboration.

There is going to be reference to them. That is why if you want voir dire on authenticity I have no objection.

MR. BLYER: Your Honor, I have no objection to the introduction in evidence of Respondent's Exhibits 8, 9 and 10, just

with reference to Respondent's 9 I would like to note that only in reference to the payroll schedule for one week or maybe two weeks, and I know Mr. Monat has said that he's going to refer to these payroll schedules with regard to future testimony.

But I'm not anxious to make things difficult, but I don't want
703 to be burdened by payroll schedules being --

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But I'm not anxious to make things difficult, but I don't want to
704 be burdened by payroll schedules being in evidence which are

not referred to so that I have to go through them and sort of ascertain what arguments could flow from them.

MR. MONAT: Your Honor, I understand Mr. Blyer's position and I have no difficulty with that.

They are offered to show the various hours people had, when hours were changed, the days that people worked and particularly in the relevant period of December and early January when there have been various changes of duties assigned and so on.

There is also some relevance in these documents to the status of Joan Holand when she became floor manager and I don't intend to keep General Counsel in the dark about relevance of these documents.

MR. BLYER: Are you going to refer in one way or another to the specific schedules that you think are relevant to your case?

With regard to the others that aren't mentioned, would it be correct to say I wouldn't have to bother too much with them?

MR. MONAT: No, I won't go that far.

MR. BLYER: Well, at this point, Your Honor, I don't see any relevance to any other of the documents other than the ones that have been referred to.

705 Otherwise we are caught with the problem that we have a lot of paper in evidence and from them we are going to have to decide what is relevant.

MR. MONAT: Your Honor, I will take the payroll records subject to offering them at a later time.

JUDGE MALLER: Very well, I will receive in evidence 8 and 10, and as to 9 you may reoffer them later.

MR. MONAT: Thank you.

(The documents above-referred to heretofore marked Respondent's Exhibits Nos. 8 and 10, were received in evidence.)

Q. (By Mr. Monat) Mrs. Katz, you have been here throughout the entire proceeding and heard the testimony of General Counsel's various witnesses? A. Yes, I have.

Q. Was there ever any period of time where you assigned an abnormal number of cleaning duties to Debbie Caron and Paulette Anderson? A. No.

Q. Did you hear the testimony that in approximately the period from December 15th through the 31st that you were assigning them more cleaning duties than usual, or testimony to that effect? A. Yes, I did.

Q. Did you in fact continuously and intentionally give them
706 cleaning duties over a period of some two weeks at that time? A. No.

Q. That were excessive? A. No.

Q. What are the cleaning duties that you perform at the gym? A. There are various cleaning duties that are done at the end of the evening such as vacuuming the gym and the ballet room, doing the mirrors, dusting the chrome which is part of the equipment, wiping down the leather which is part of the equipment, mopping the tiles around the gym area, dusting the rollers and replacing the weights back in their original position.

Q. Do they have to clean any sinks or toilets or anything of that nature? A. Nothing.

Q. In assigning cleaning work did you use the terms heavy and light? A. No, not at all.

Q. Had you ever heard the duties referred to in terms of heavy and light prior to this hearing? A. Never.

Q. Is there anything unusual about mopping being done?

A. No.

707 Q. How much time is spent on cleaning duties by the instructresses? A. Approximately 10, 15 minutes.

Q. Who does the cleaning? A. Everyone does.

Q. Is there a specific job that each one is assigned each night, refe rring now back to the period in December? A. Well, sometimes there's a cleaning schedule kept and we rotate the girls' names so that the same girl doesn't do the same job each night.

That does differ from tim to time though.

Q. What kind of factors would cause it to differ? A. If a girl is out ill naturally someone else would have to do her job.

If a girl is on vacation, if a girl is there but for some reason is not feeling that well someone else may chip in and do her share of the responsibility.

Q. What time is the cleaning done at the gym and when I ask you these questions, Mrs. Katz, I'm referring to the period in and about December and January of 1973, '73 and January, '74.

What time is cleaning done? A. It is done between 9:00 and 10:00 in the evening.

Q. Why is that period of time when cleaning is done? What is the reason? A. Well, our g m is closed to the members at 9:30.

708 Therefore, we can't do any kind of cleaning until the members are out of the gym facilities.

Q. What time would you normally start doing vacuuming of the main gym and the ballet room? A. Vacuuming is the last cleaning that is done and the ballet room we start at 9:30, quarter to 10:00, I'm sorry, in the gym.

In the ballet room it is usually done after the 9:00 o'clock -- after the 8:30 close so it would be done about 9:00.

Q. Did you ever make Paulette or Debbie stay late to vacuum? A. No.

Q. Did you give them any cleaning duties in December that they had never done before? A. Not at all.

Q. Do you recall testimony by Paulette and Debbie about a conversation they had with you with respect to their claiming that they were being harassed and so on? A. Yes, I do.

Q. Do you recall that there was some kind of conversation with them? A. Yes, there was.

Q. Approximately when was that? A. That was some time during the period of I would say December 15th to the beginning of January.

Q. Prior to this conversation had they ever made any claim to you that you were harassing them in terms of cleaning duties or anything else? A. No, they didn't.

Q. Now, what was said in this conversation? A. Debbie and Paulette approached me at the office and told me that they felt they were being harassed by me, they felt that I was giving them additional cleaning duties and additional calisthenic classes and they couldn't understand what the reasons were for it.

Q. What did you say? A. I said that I didn't quite understand what they were referring to since we always had cleaning duties to do and we always had calisthenics classes to teach and I just couldn't understand what their reasons were for talking to me.

Q. During the period December 16th to the 31st or thereabouts did you keep any employees just standing around while Debbie and Paulette did all the cleaning? A. No.

Q. Would you refer to Respondent's Exhibit No. 9 and the payroll records and point out to us if they indicate whether
710 Debbie Caron and Paulette Anderson received any vacation or holiday pay, pay for time not worked in other words in that period? A. Yes.

Just one moment.

On December 24th, Monday evening, both Debbie and Paulette were due to work in the evening and they were not -- they did not and they were paid for that evening.

Q. What about around the New Year's? A. Also on Monday, December 31st, the same applied to them.

Q. Do you know whether the year before we had paid holiday pay for that time? A. No, we did not.

JUDGE MALLER: I don't understand.

I am looking at the payroll record of January 4, '74 which covers Monday, the 31st.

They were off, is that correct, but you still credited them with four hours apiece, is that right?

THE WITNESS: Yes, that is correct.

JUDGE MALLER: And you paid them for that?

THE WITNESS: That is correct.

JUDGE MALLER: Thank you.

Go ahead, please.

711 MR. MONAT: I would like to mark a document as Respondent's Exhibit No. 11, a document consisting of three pages.

(The document above-referred to was marked Respondent's Exhibit No. 11 for identification.)

Q. (By Mr. Monat) Mrs. Katz, with respect to Respondent's No. 11 would you tell us what that document is? Do you have a name for it? A. Yes, these are our workout statistic sheets.

JUDGE MALLER: What?

THE WITNESS: I'm sorry, workout statistic sheets.

Q. What period of time do these sheets cover? A. Do they cover?

Q. Yes, what period of time? A. They cover from November 7th until February 24th.

JUDGE MALLER: What do you mean by workout?

MR. MONAT: I was going to --

JUDGE MALLER: I'm sorry.

Q. (By Mr. Monat) What is a workout? A. What are these workout statistic sheets?

Q. Yes. A. These represent the amount of members that come into the gym area to work out on their programs.

Q. Are these on women's days? A. Yes, that is correct.

712 Q. Were the same kinds of records kept for men at that time? A. I really don't know.

I don't think so.

Q. Exactly what does this sheet represent? Could you explain to us? A. Yes, when a woman comes in for her workout her card is removed from the file and an instructress works with her.

When the instructress is finished working with her card is placed in the basket.

Periodically during the day a count is taken.

The cards are removed from the basket and the cards are checked.

They count up how many cards are in that basket and then is put in a specific boxes on this workout statistic sheet.

Q. Would you refer to the first line on the first sheet dated 11/7? A. Yes.

Q. Would you just go across that column and explain what the various items under the workout heading indicate? A. Okay.

First we have the day which is Wednesday and the date, 11/7.

713 Then you have the hours from 10:00 to 2:00 which indicate the amount of people that came in for their workouts between 10:00 o'clock and 2:00 o'clock.

Q. So the count would have been made at 2:00 o'clock; is that right? A. Correct.

Do you want me to continue?

Q. Yes. A. Then you have 2:00 to 5:00 when another count was then taken.

A count between 5:00 and 8:00 in the evening, a count between 8:00 and 10:00 in the evening and then a total count.

Q. For that particular day it shows 291.

Would this mean there were 291 workouts that day? A. That's correct.

Q. Each workout would get a program card? A. Yes.

Q. Is there an indication on these sheets with respect to December 16th, a Sunday?

If so would you refer to it? A. Yes, December 16, Sunday.

The first count taken was between 1:00 and 3:00 and that was 51 people.

The second count was taken between 3:00 and 5:00 and that was 15 people.

714 the total number of workouts were 66.

Q. Would you explain that because on top of the column there is 10:00 to 2:00 and 2:00 to 5:00? A. Yes, Sunday the gym is open to women between the hours of 1:00 and 5:00.

Now, the first column where you see 10:00 to 2:00, on Monday, Wednesday and Friday the count during this time would

go in that box, but on Sunday we use the hours between 1:00 and 3:00 in the column.

That is why you don't see 1:00 and 3:00 but that is what is used.

Q. It indicates that there were 66 workouts that day. Were you working that day? A. Yes, I was.

Q. On that day did you give Paulette Anderson 20 cards? A. I don't recall if I did or not.

Q. Could you recollect from the number that there were 66 workouts?

Whether you would have or not do you have any idea?

MR. BLYER: Objection to would have.

It is speculative. She says she doesn't know.

Q. (By Mr. Monat) Do you have any specific recollection?

715 A. I would say probably not because the workout 66 is a very small amount of people.

That is between the hours of 1:00 and 5:00 and as I understand it 51 came in between 1:00 and 3:00 and only 15 between 2:00 and 5:00 and I really don't think that she would be given 20 people all at once.

MR. BLYER: Your Honor, I move that the testimony be stricken.

It is in no way probative.

She is just speculating as to what occurred on that date.

She has no independent knowledge of what happened on this day.

JUDGE MALLER: It will be received for what it is worth and as to the value of the testimony, I will decide that.

Let us go back to that Sunday.

Where is it?

THE WITNESS: Here.

JUDGE MALLER: You say between the marking 10:00 to 2:00 is really what hour?

THE WITNESS: 1:00 to 3:00 right here.

JUDGE MALLER: And 2:00 to 5:00?

THE WITNESS: This is between 3:00 to 5:00.

JUDGE MALLER: I see, thank you.

716 Q. (By Mr. Monat) Mrs. Katz, do you normally recall specifically how many cards you give a person on any particular day? A. No, I don't recall.

Q. Is there any particular Sunday that you might consider heavy in December in terms of the number of workouts? A. Yes, just let me look through this.

Yes, on December 30th we had a total of 141 workouts which is almost double from two weeks before.

Q. What did you say the total was? A. 141 total workouts Sunday, December 30th.

Q. Were you working that day, do you know? A. I don't recall if I was or not.

Q. There are a number of dates here that cover the period from 11/7/73 to February 24th of '74.

Do you know these figures and sheets to be kept in the regular course of business by the Company? A. Yes.

Q. What happens with them after they are all made up, these sheets? A. On the first of each month these sheets are then sent to the main office.

Q. Who makes them up? A. The floor manager makes them up.

717 Q. Incidentally where is the main office located now? A. It is now Lake Success.

Q. And as of December, '73 where was it? A. It was in our Little Neck gym.

MR. MONAT: I offer this document consisting of three pages in evidence, Your Honor.

JUDGE MALLER: Any objection?

MR. BLYER: May I have a brief voir dire?

JUDGE MALLER: Voir dire examination permitted.

VOIR DIRE EXAMINATION

Q. (By Mr. Blyer) You say, Mrs. Katz, that the floor managers will make up these sheets? A. Yes.

Q. I show you what has been marked as Respondent's Exhibit No. 11 for identification.

Are those the handwritings of various floor managers on those sheets? A. I would say they were, yes.

Q. Are there different handwritings there? A. Yes, there certainly are.

Q. How many would you say would be different? A. Well, I would say that these two were the same possibly.

718 Q. You are referring to the sheet headed Friday, 12/14 and the sheet headed Sunday, 1/20 as being the same handwriting? A. Right, and this one might be different.

Q. You are referring to the sheet dated 11/7? A. Right.

Q. Whose handwriting would that be on 11/7? A. I don't really know.

Q. Who was the floor manager at the time? A. Nancy DeMasi was the floor manager at 11/7.

Q. She left shortly thereafter? A. Correct.

Q. And it is the same handwriting throughout all the way through, 12/12. How is that explained? A. Well, the floor

manager may have had one -- another girl just recopied the figures or add the figures.

They are hers but the floor manager is responsible for that and the floor manager puts her final word on it.

Q. I'm asking you is this the original? A. This is the original.

Q. So there has been no copying? A. Not as far as I know, there has not been.

Q. So how do you explain the same handwriting throughout on that first sheet? A. I really can't explain it.

* * * * *

722 Q. During this period from 12/14 through 2/24 which is the periods that are reflected on the two sheets we have been talking about, at least for this period of time you had Ellen Brezenoff as an assistant in training during this period of time? A. Would you repeat that question again?

Q. From the period 12/14 through 2/24 you were the floor manager part of that time? A. Yes.

Q. And you had an assistant trainee with regard to floor manager Ellen Brezenoff? A. Ellen was never an assistant trainee.

Ellen would help me out on occasion.

Q. When you weren't there who was in charge of the floor? A. Well, Ellen would do it at times if I felt that she could or I would ask someone else to keep their eye on the floor for the time being.

I was there most of the time.

Q. Who would that be? A. Pardon me?

Q. Who else would you ask? A. Whoever was there.

723 Q. For example? A. Well, if Joan was there or Dee was there or Ellen. Those were the three full time girls.

Q. Dee and Joan, when did they begin their employment with the Company? A. I would say just about the end of November.

Q. And before February 24th at least Joan had become a floor manager? A. Joan Holand became a floor manager around the 8th of February.

Q. And the same, Dee became your assistant? A. At the same time, correct.

Q. Then it would have been their job to see that this sheet was correct and was done? A. Correct.

Q. And it would be their job to assign someone to fill in those numbers or to do it themselves? A. Correct.

Q. I see this column on the right headed guests.

What does that refer to? A. That refer to the guests that come on the gym floor that are taken through a workout.

* * * * *

725 MR. BLYER: I would oppose it on the grounds of authenticity, Your Honor.

I think it is highly suspect.

JUDGE MALLER: Do you intend to get any handwriting expert on this matter?

MR. BLYER: I think Your Honor is qualified to do that and I would call upon him.

JUDGE MALLER: I appreciate your confidence in me.

Respondent's Exhibit 11 is received in evidence.

(The document above-referred to heretofore marked Respondent's Exhibit No. 11, was received in evidence.)

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726 DIRECT EXAMINATION (Continued)

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Q. (By Mr. Monat) Incidentally, we use the terms Little Neck and Douglaston interchangeably to some extent, is that correct?
A. Yes.

Q. It refers to one and the same gym? A. Right.

Q. Did you personally authorize or assign especially and additionally a number of classes for Debbie Caron and Paulette Anderson in the latter two weeks of December? A. No.

Q. What is done in the calisthenics class? A. The
727 instructor teaches the class free style exercises to the members.

She will demonstrate one or two of each exercise and then walks through the class correcting the members.

Q. How long does the class last? A. Anywhere between 20 minutes and 30 minutes.

Q. Who assigns the calisthenics classes? A. The floor manager.

Q. Were you the one who did that in December? A. Yes.

Q. What are the factors which might affect who would get a calisthenics class, what considerations?

How do you decide who gets a calisthenics class? A. Well, there are several classes that are held during the day.

Usually when the part time girls come in at night they will take the evening classes since the full time people have been teaching all day long.

Q. Do you schedule your customers to come into the gym at any particular time? A. No, we do not.

Q. Do you have any schedule as to when they are coming in exactly? A. No.

Q. Do you tell your customers which calisthenics classes,
728 if any, they must attend? A. No, we don't.

Q. They have a choice where they go? A. Yes, they may take anyone that they want to.

Q. Did you at any time give Paulette Anderson or Debbie Caron in the two week period at the end of December continuously more classes than any other employee there? A. No, I did not.

Q. Did you have an intentional and designed effort at any time to give them more cards? A. No.

Q. So that the number of cards each employee has at any given moment always equal? A. No, they are not.

Q. Is there any variation to the number of cards different employees have? A. Yes.

Q. What factors would result in the variation? A. Many factors.

Number one, the time of the day.

I guess the weather would play a great part in it. People coming in during -- to the gym at all hours and depending upon how many people will come in at that time will determine how many workouts are taken through.

729 Q. At any given minute like at 7:00 or 8:00 o'clock do all the instructresses have the same number of cards? A. No.

Q. Why not? A. Well, because you may get a certain amount of people in at 7:00 o'clock and then you may get another group of people in at ten after 7:00.

You may have one come in at 7:00 and ten come in after 7:00 or vice versa. There is no set amount. There is no way of knowing.

Q. Do you recall Rolinda Antone working in December? A. Yes, she was.

Q. Do you know if she worked Friday nights? A. During that time there was a period when she was working Friday nights, yes.

Q. Did she ever at anytime speak to you about whether she could continue to work Friday nights? A. Yes, she did.

Q. When was that? A. I believe it was sometime in January.

Q. Approximately when in January? A. I'd say the beginning of January.

Q. What did she say to you? A. She said that due to the fact she was unable to get a babysitter for Friday nights she would
730 not be able to continue working for us on Friday nights.

Q. Do you know whether after that she did continue for some period of time? A. Yes, she did because we were unable to get anyone to replace her and she continued for another three weeks.

Q. Did you have an employee named Jackie Balalaos who came to work for you? A. Yes, we did.

Q. Do you recall when she came to work, approximately? A. Yes, I believe it was the first week in January.

Q. Did you have any discussion with Jackie Balalaos prior to that time about her hours? A. Yes, I did.

Q. What was that discussion? A. I told her what her hours would be and just explained everything to her.

Q. What did you tell her about her hours? A. I gave her the hours that she would be having as a full time instructress.

Q. Specifically did you mention what days and hours? A. Yes, I did.

Q. What were they? A. I told her that she would be
731 working on Sunday from 1:00 to 5:00, Monday, Wednesday from 10:00 to 10:00, Thursday from 1:00 to 6:00 and Friday from 3:00 to 10:00.

Q. Did Balalaos start those hours that very first week that she worked? A. Not quite.

She started on a Wednesday so that first week she worked Wednesday from 10:00 to 10:00 and Friday from 10:00 to 10:00 and since our payroll ends on Friday that was the end of her first week.

She only worked the two days.

The following week is when she began her full time schedule.

Q. You have a woman instructress who works on Thursdays; is that correct? A. Correct.

Q. And also on Tuesdays? A. Correct.

Q. Is she the only one who works as a woman that day? A. Yes.

Q. What is that job? A. During that time the instructors will teach calisthenics classes, will call inactive people that have not been coming to the gym, to try to encourage them to come down,
732 will give tours, will very often take renewals at the reception desk and assist the manager in any way that the manager finds it necessary.

Q. What were the hours of the girl you had working on Tuesdays as of December? A. On Tuesdays?

Q. Yes, right. A. All right, from 2:00 to 8:00.

Q. Was she a full time or part time? A. A full time girl.

Q. Do you recall who that was? A. Well, let me think now. I believe Joan Holand at the position at one time on Tuesday.

Q. For how long had you had a full time girl on Tuesdays?
A. For quite sometime.

Q. What had been your experience in terms of how it worked out? A. It worked out very well.

Q. In what respects? A. Well, prior to that we had a part time girl on Tuesday and we found that when you place a full time girl in a position on the day that the part time girl -- on the date that the floor manager is not there the full time girl is very
733 devoted, she is career oriented, whereas a part time girl goes to school very often and is there just for a certain amount of hours.

So we find it much more successful to have a full time girl take the position on the Tuesday when the floor manager was not there to oversee her.

Q. Who was working as of December on the Thursday?
A. As of December?

Q. Yes. A. Before December?

Q. In December? A. Paulette was working.

Q. Paulette Anderson? A. Correct.

Q. Did there come a point when you reached any decision with respect to her Thursday hours? A. Yes, there was.

Q. Tell us when and why you reached that decision and what it was? A. Yes.

We had hired Jackie and Jeanie, two full time girls.

JUDGE MALLER: Give us the last names.

THE WITNESS: Jackie Balalaos and Jeanie Murphy and Jackie was going to be taking over the Thursday hours of Paulette
734 because we had found it working so successful on the Tuesday.

So since we had Jackie we were going to give her the Thursday hours. At that point I told Paulette --

Q. You had a conversation with Paulette after you decided this? A. That is correct.

Q. When was the conversation, approximately?
A. About a week before.

Q. A week before what? A. Jackie took over the Thursday hours.

Q. What was your conversation with Paulette? A. I explained the situation to Paulette and told her why we were going to be incorporating the Thursday part time hours with the full time girl, and at the same time Rolinda had also told me that she was unable to continue working on Friday, so I felt that this would be an opportunity for Paulette to take Rolinda's hours over.

I offered them to Paulette and she told me that she was unable to work on Friday on a steady basis but that she would be more than happy to help us out on occasion if we needed someone.

Q. Was there a time when Debbie Caron's hours were reduced by two hours a week, the 5:00 to 6:00 hours eliminated, do you recall that? A. Yes.

Q. Would you check the payroll to see when that occurred? I believe in reference to the week ending February 22nd, those time sheets would help? A. Yes, this is the first week she appears on her payroll working when her hours were changed.

Q. Would you tell us why her hours were changed?
A. Yes.

At that point we had another girl that was transferred from one of our city gyms to work at Little Neck.

We had also I believe at that point lost a receptionist so we needed a full time girl there.

Now, this girl was going to be working as a receptionist and instructress.

As a matter of fact, all the girls were going to be doing that.

Therefore, it was unnecessary to have any part time girl come into the health spa at 5:00 o'clock since that was our slowest time of the day and we had plenty of cover at that point.

Q. Was there anything unusual about changes in the hours of part timers at your gyms? A. Not at all.

736 Q. Were you here this morning when Ellen Brezenoff testified? A. Yes, I was.

Q. I believe she testified about a conversation she had with you prior to the election in the fall of 1973; do you recall that? A. Yes, I do.

Q. Did you ever tell her that Debbie and Paulette had bad attitudes and she should not involve herself, she should not involve herself with Debbie and Paulette? A. No, I did not.

Q. Did you ever tell her that by not involving herself with Debbie and Paulette she would keep her record clean? A. No.

Q. Did you ever tell her at that time that she should try to separate the girls from Debbie and Paulette? A. No, I didn't.

Q. Do you recall any conversation with Ellen Brezenoff prior to the election? A. Yes, I do.

Q. Can you place approximately how much prior to this would be?

Any idea? A. I would say it must have been a week before
737 the election.

Q. What did you say? A. I told Ellen that we had two new girls starting with us, both of them full time people and I wanted to use Ellen as an example.

I felt that she was a very good instructress and I wanted the girls to learn from someone who was very good so I explained to Ellen that these two new girls were brand new, were starting, and I wanted, as I said, to use Ellen as an example.

Q. Did you mention Paulette or Debbie to Ellen at all?
A. No, I didn't.

Q. I believe there was some reference to a condition that Ellen Brezenoff had in December sometime.

Do you recall what kind of affect that had on her work?
A. Yes, I do.

Q. Do you recall a conversation with Ellen Brezenoff after the election? A. Yes.

Q. Would you tell us what that conversation was about?
A. Yes, I had spoken to Ellen because she was really not feeling well and I felt that taking these things into consideration I suggested
738 to Ellen that maybe it would be easier if all the girls participated a little more in the calisthenics classes, taking members through and with whatever cleaning duties there were, to give Ellen a chance to be able to rest.

There were many times during this period where she would comein and she would just pull the cards of the members that came on to the floor because she really was not feeling well.

Q. Did you ever tell her that she should make sure that specifically Debbie and Paulette were kept busy and singled those two out to her? A. No.

Q. Did you tell her to assign a particularly large or abnormal or extra cleaning duties to Debbie and Paulette? A. No, I did not.

Q. Was Ellen Brezenoff ever told that she was floor manager?
A. No, she was not.

Q. Or assistant floor manager? A. No.

Q. Was she ever told that she was a trainee? A. No.

Q. Did you ever in any way authorize Ellen Brezenoff to give an additional cleaning duties to Debbie Caron and Paulette
739 Anderson? A. No.

Q. Did you ever in anyway authorize Ellen Brezenoff to give particularly large numbers of program cards to Debbie Caron and Paulette Anderson? A. No.

Q. Did you ever call Ellen Brezenoff into your office and tell her not to tell anyone that she had told you that Debbie Caron had called or anything like that? A. No.

Q. Do transfers of any kind ever occur in the operation of the Jack LaLanne gyms? A. Yes, they certainly do.

Q. Can you tell us over the past six months any examples of that? A. Yes, I can.

Q. Please do. A. All right.

We had a full time girl, Susan Stewart who worked at Woodmere that was transferred to Little Neck and back to Woodmere.

A full time girl, Estelle Hecht that worked at Lefrak City and was transferred to 86th Street, back to Lefrak City, to Little Neck, back to Lefrak City.

740 A floor manager, Terry Lorenzo, floor manager of Lefrak City.

Was transferred to Little Neck and back to Lefrak City.

Our part time instructors, Donna Marcus who worked at Lefrak City was transferred to Little Neck and back to Lefrak City.

A part time instructress, Maria Campo who worked at Lefrak City, was transferred to Woodmere, was transferred to Lefrak City, back to Little Neck and to Lefrak City again.

A part time instructress, Linda Nadler that was transferred from Madison Avenue to 86th Street.

A part time instructor, William Sackell that was transferred from Lefrak City to Madison Avenue.

MR. BLYER: Your Honor, without getting into the relevance of any of the names, the female names she mentioned, I think it is irrelevant whether any male instructors were in fact transferred, and she was beginning I assume to go through male instructors.

I would object at this point to any further enumeration of any male instructors on the grounds of relevance.

MR. MONAT: Your Honor, I oppose that, of course.

741 It is our submission as has been found by both the Administrative Law Judge in the prior case and by the Regional Director that transfers are the most common occurrence in this Company.

We transfer everybody and I think it is perfectly proper here that I show that everyone was transferred.

I don't have to restrict it to anyone particular employee.

I think it is a question of what weight you want to give it.

JUDGE MALLER: The objection is overruled.

Q. (By Mr. Monat) I believe you had just mentioned Sackell? A. Yes.

Do you wish me to continue?

Q. Where was the Sackell transfer? A. He was transferred from -- I'm sorry, from Lefrak City to Madison Avenue.

Let me think.

Melinda Saul, part time instructress, transferred from Madison Avenue to 86th Street, back to Madison Avenue again.

Joanna Kelman, part time instructress, transferred from the Executive Club to the Biltmore, to Little Neck.

742 Full time instructor-receptionist, Hilda Cardona, was transferred from Madison Avenue to Little Neck.

Full time instructress-receptionist, Smithwyck, was transferred from Little Neck to Madison Avenue.

Do you want me to continue?

Q. Yes. Can you think of any others? A. Let me think now.

Yes, full time receptionist Randee Nicholas, was transferred from the Biltmore Hotel to Madison to Lefrak City, back to Biltmore again.

Virginia Beavis was transferred from the Executive Club to Madison Avenue.

She is a part time instructress.

Q. Incidentally, do you know Joan Holand? A. Yes.

Q. Do you know where she works now? A. Yes, Joan Holand was the floor manager at Little Neck.

Was transferred to Madison Avenue. Is now floor manager at Madison Avenue.

Eileen Garvey, floor manager, now at Woodmere, was transferred from Lefrak City to 86th Street to Woodmere.

Q. You mentioned Maria Campo.

Could you recall for us where she worked? A. She worked at Lefrak City.

743 She has worked at Woodmere and she had worked at Little Neck and she had worked at Madison.

She has worked at -- back at Lefrak City again.

Q. Transferring people, is that part of your duties? A. Yes.

Q. How long do your transfers last? A. It could be a day or a few weeks.

Q. Is there anything unusual in your mind at all about transferring employees? A. Not at all.

Q. Do you recall an occasion where last February you had a need for help at Woodmere gym? A. Yes, I do.

Q. Do you recall the reasons that you needed someone at that time? A. Yes.

Q. When was it, first of all? A. It was the very, very beginning of February.

Q. What were the reasons that you recall at that time for needing someone? A. Well, we had a full time instructress, Janice Rigney that was going to be leaving us and our floor manager Eileen Garvin had been ill.

Therefore, we didn't have enough people there and there was
744 a dire need for someone, especially in the evenings to go to Woodmere.

Q. What efforts did you make, if any, to get someone to go there? A. I called various people at the gyms and spoke to them.

Q. Who did you speak to and tell us about it? A. All right.

I first contacted Rolinda Antone and asked her if she could possibly help us out going to Woodmere for a very brief time.

She said she would like to help us out but due to the fact that she had a babysitter problem she was unable to get her babysitter at her house early enough to get to Woodmere on time so she was unable to help us out.

I then contacted Debbie Caron and asked her if she would be able to help us out at Woodmere and Debbie explained to me the situation that she had with her car.

It seems that she and her sister share the car and her sister would drop both at Little Neck and then proceed to her job and pick her up at Little Neck afterwards.

It was rather an impossible situation for Debbie.

I then called Paulette Anderson and asked her if she could help us out at the Woodmere spa.

745 She then told me she was having some kind of a problem with gas but she thinks whe could help us out and she would give me a call early Monday morning and let me know definitely what the story would be.

Q. Did you talk to her the next Monday? A. Yes, I believe that Monday was February 4th. I spoke to Paulette.

Q. What was said? A. Paulette said she was able to get gas and that she would help us out.

She asked me for how long a time.

I said I wasn't sure about the time.

I told her when she gets a chance to please give Gabrielle Schwartz a call in the office and that was the end of our conversation.

Q. Do you recall she specifically told you that her car was borrowed? A No, I don't remember anything at all about her car being borrowed.

Q. Did you ever tell her anything about investing a time to call Anita -- to call Gabrielle, I'm sorry? A. No.

Q. Did there come a time when you had a need for staffing at Madison? A. Yes.

746 Q. When did that come about and why did you have a need there? A. That came about approximately March 15th.

The reason for the need there was that we had just lost our floor manager, Honey Gordon.

We had also a full time girl, Bo Brower that had been sick for approximately two weeks and we lost a part-time girl, Catherine Cafta.

Since Madison Avenue is one of our busier gyms we were really quite short at that point and we needed at least one girl additional there.

Q. What efforts did you make to get somebody for Madison at that time? A. Well, I had contacted all the floor managers and asked them if they would please call people on their staff to see if someone could give us a hand at Madison.

I myself contacted various girls as well.

Q. Who did you speak to? A. I spoke to Rolinda Antone.

Q. What did you say to her? A. I asked Rolinda if she could possibly help us out at Madison and she said she couldn't again because of her babysitter problem.

At that time I suggested -- asked her if she could possibly work
747 at Lefrak City, thinking that one of our part time girls at Lefrak City, Maria Campo, would be able to go to Madison.

At that point I then called Debbie Caron and asked Debbie if she could help us at Madison too and Debbie said it was impossible for her because of the situation with her car, and she went ahead and told me about the car once again.

Q. Did you speak to Paulette about it? A. Yes, I did.

Q. When was this?

When are these conversations? A. March 15th. It was a Friday.

Q. You talked to Debbie and Rolinda that day? A. Correct.

Q. And you were talking to Paulette at this date also?

A. Right.

Q. Tell us what was said? A. I spoke to Paulette and I again explained to her the situation at Madison Avenue and asked her if she could possibly help us out for a very brief time at Madison, and she said to me, "I absolutely refuse to go anywhere."

I explained to Paulette that it would only be for a short time.

748 I even had told her that I would give her additional hours and I would let her work from 5:00 to 9:00 Monday, Wednesday and Friday but pay her to 10:00, and she once again said, "I absolutely refuse."

JUDGE MALLER: What do you mean you would pay her to 10:00?

THE WITNESS: Well, taking into consideration she was coming at some distance we would pay her until 10:00 o'clock.

JUDGE MALLER: Oh, until 10:00?

THE WITNESS: She would work from 5:00 until 9:00 and we would pay her to 10:00.

JUDGE MALLER: Thank you.

Q. (By Mr. Monat) Was your conversation with Ms. Anderson on the phone or in person? A. No, it was on the phone.

Q. What about with the other girls? A. They were all on the phone.

Q. Where were they when you were speaking to them? A. They were home, I believe.

Q. Was there anything unusual about your talking to your instructresses at home? A. Not at all.

Q. Do you recall any mention of Lefrak City at that time?

749 A. Yes, I did mention Lefrak City to Rolinda and I --

Q. I'm talking about a conversation with Paulette? A. Yes, I also mentioned it to Paulette because as I explained we could get a girl from Lefrak City to go to Madison Avenue. Paulette absolutely refused to go any place but Little Neck.

Q. Well, did Paulette say anything about the subway at that time? A. She mentioned something briefly but I don't know if it was in that conversation.

Q. As best you can recall at that time on that Friday, March 15th, did she mention anything about the subway?

A. At that point, no.

To the best of my recollection I don't believe that she did.

Q. Then did you speak to anyone else about this situation at that time? A. Yes -- no, at that point I didn't speak to anyone else.

I had contacted --

Q. Did you speak to anyone again that you had spoken to?

750 A. Yes, I spoke to Rolinda again and she was able to make the necessary arrangements and she said that she would be happy to go to Lefrak and help us out.

Q. In other words, you spoke to Rolinda after you had already spoken to Debbie and Paulette? A. Right, we just firmed everything up.

Q. Did she go to Lefrak, do you know? A. She went to Lefrak and Maria Campo was going to be going to Madison Avenue.

Q. What happened to Maria Campo? Did she go?

A. No, she didn't go.

Q. Do you know why? A. Yes, Maria had something happened to her car.

She called the floor manager at Lefrak City and said that she couldn't possibly get into the City, she would have to come to Lefrak because she was getting a lift with someone.

At that point we said okay, go to Lefrak and I had called Rolinda up myself.

I spoke to her husband.

Rolinda had already left for Lefrak City so we had no way of getting her, so that night both Rolinda and Maria Campo worked at Lefrak City.

Q. Did your problems continue at Madison the week following
751 March 15th? A. Yes, they did.

Q. In what respects? A. At that point we lost another girl.

We didn't lose her, she was out ill, Elizabeth Warren, our full time receptionist was out ill for the entire week.

Q. Anyone else that you can recall? A. Boe Brower had come back at that point, except that she was not functioning well at all.

She was still quite tired and she was just there.

She wasn't really doing that much of anything.

Q. What about Honey Cordon, the floor manager? A. Honey Cordon, had left us the week before so we were now minus Honey Cordon, minus the receptionist, minus the part time instructress, and had one girl that was back but was not really functioning.

Q. Who was the part time instructress? A. Catherine McKafter.

Q. Did you make any efforts to get help for Madison again? A. Yes, I certainly did.

Q. When was this? A. That was Friday, the 22nd of March.

Q. Did you do it in person or by phone? A. By phone.

752 Q. Who did you call? A. I once again spoke to the floor managers in all the gyms, apprised them of our situation and asked them if they would please contact people on their staff to see if they could again help us out since this shortage was very severe. I myself contacted Rolinda and Debbie and Paulette.

Q. Did you have any success with your other floor managers getting someone? A. No, they were unable to help us out at all.

Q. Do you know why? A. Yes, all our staffs, all our clubs at that point were operating on a very, very small staff, at the barest staff possible.

Little Neck was the one club that had a sufficient amount of staff and even had -- well, just had a sufficient amount of people.

Q. Who did you talk to on March 22nd? A. I spoke to Rolinda and asked her once again if she could possibly help us out and she said that she was having problems with her sitter and she just didn't think it would work out.

I spoke to Debbie again, Debbie Caron, and she repeated the same situation with her sister's car and said that it really would be difficult.

753 If I ran into a problem I could always call her but she just didn't see how it could work out.

At this point I called Paulette again and I said to Paulette, "Listen, please, you know, we do have a shortage there. Can't you just help us out?"

Paulette said, "I absolutely refuse to help you out anywhere. Please ask someone else."

At that point I did remind her that Rolinda had just worked for us at Lefrak City and Maria Campo had just gone to Madison and everyone has, you know, really been helpful, and I said to her, "Listen, if you can't go to Madison, then can you go to Lefrak and we will work something out again?"

She said, "Absolutely not, I refuse to go any place."

At that point I said to Paulette, "Paulette, if you are not going to be able to help us out I'm going to have to terminate you which I

really don't want to do, please remember," this is what I said, "and maybe we can work something out."

That was the end of the conversation on Friday night.

Q. Do you recall a conversation with her on Sunday?

A. Yes, I do.

Q. How many conversations did you have with her on Sunday?

754 A. I had two.

Q. When was the first one? A. I called her prior to her leaving for work and I once again explained to her what the situation was and I said, "Paulette, have you given it any more thought?

"Please, it is only for a very short time, I just need you there."

And she said to me, "No, I absolutely refuse."

She was very adamant about the thing which I found it hard to understand from Paulette because she has always been very cooperative.

At that point I asked her why she was so -- just didn't want to go and she briefly mentioned to me something about her cousin or sister, I can't recall what, having a problem in the subway and she just didn't want to go.

I said, "Well, if that is the case, then again please go to Lefrak City."

She said, "I refuse to transfer any place, it is just the principle of it. I don't want to go."

I once again said to her that Sunday, "Paulette, please help us out, I don't want to have to terminate you but I just need you at Madison or Lefrak for a very short time.

755 "I will call you back later. I know you are on your way to work and maybe we can think about it some more," and that was the end of that conversation.

Q. Did you talk to her later? A. Yes, I did. Sometime in the afternoon I called the club that she was working at.

Q. What was said in that conversation? A. I asked her again if she had thought over what we had discussed and she said to me, "I won't go any place.

"I will not go to Madison, I will not go to Lefrak City.

"I just refuse to transfer."

I said, "Paulette, please."

I kept begging her, you know, and I kept saying "Paulette, please, we have so many people out at Madison. Can't you just help us out for a very short time?"

She said, "Absolutely not, I refuse to transfer any place."

I said, "Paulette, I'm going to have to terminate you and I don't want to terminate you," and that was the end of the conversation that Sunday afternoon.

Q. What if anything did you do on Monday about the situation. A. Well, Monday I was in the office and I spoke to Gabrielle Schwartz and I said to her, "Listen, we have a real problem.

"Paulette won't go to Madison. I don't have anyone to go. What do you think we should do?

"She absolutely refuses to transfer?"

Gabrielle had told me at that time not to do anything, she would be in touch with her attorney and we would take it from there.

Q. Did you tell her about your conversations with Paulette? A. Yes, I had briefed her in terms of what had transpired.

Q. Did you have any further involvement after that point? A. Not at that point.

Q. Do you have any instructresses who work at night in your four gyms in Manhattan? A. Yes, we do.

Q. What hours do they work? A. They work till 9:00 or 10:00 o'clock.

Q. Do you know if any of them use the subways? A. Yes, they do.

MR. MONAT: I would like to identify a document as Respondent's Exhibit No. 12.

(The document above-referred to was marked Respondent's Exhibit No. 12 for identification.)

757 JUDGE MALLER: Is there a question pending?

Q. Would you tell us what that document is? A. Yes, this is from the New York State Department of Labor.

It is an unemployment insurance form, a determination of whether a person is eligible or not for unemployment insurance.

Q. Is this the copy that the Company received? A. That is correct.

MR. MONAT: I offer the document in evidence.

MR. BLYER: Your Honor, I object.

Totally irrelevant to the proceeding, not consistent with anything that has been testified to and it is just totally irrelevant on us whatever the Unemployment decided on this issue as to whether she was entitled to benefits or not and I don't see how it all comes into play.

MR. MONAT: I submit it is relevant, Your Honor.

I think in the last four to six months there was a case in which the Board said it would consider these kinds of documents.

JUDGE MALLER: Yes, the Board has said it will consider these documents.

The weight to be given to it is a matter for my determination in the first instance.

758 Respondent's Exhibit 12 is received in evidence.

(The document above-referred to heretofore marked Respondent's Exhibit No. 12, was received in evidence.)

Q. (By Mr. Monat) Do floor managers do instructing work just like other managers do? A. Yes, they do.

Q. They take members around as a manager and so on? A. Very frequently.

Q. Is there any kind of cleaning work that is done before 9:00 o'clock? A. On occasion, yes.

Very often the cleaning will start about 8:30, depending upon how many people are on the gym.

You see, we have an 8:30 calisthenics class that is the last class of the evening.

What happenes is most of the members on the gym floor will participate in the calisthenics class. Therefore leaving the gym floor kind of on the empty side.

There are cleaning duties that can be done starting at 8:30.

Q. Did you ever tell Paulette Anderson that you were going to give her first crack at a job at Madison or use that kind of language? A. No, I did not.

759 Q. If your customers, members, have complaints do they complain to you?

Do you hear complaints from members if they have a gripe? A. Very frequently.

Q. Excuse me? A. Very frequently, yes.

Q. Did they ever complain to you that in December, 1973, did any members tell you they weren't getting adequate supervision? A. No, they didn't.

Q. Did they ever complain they weren't getting proper guidance on the gym floor or anything like that? A. Never.

JUDGE MALLER: Does the question relate to the entire operation or just to Little Neck?

MR. MONAT: Well, my specific question in December.

Q. Did you ever receive any complaints from customers at Little Neck with reference to their not getting adequate supervision? A. No.

Q. Were you ever a floor manager, Mrs. Katz?

A. Yes, I was.

Q. Do you know from your experience with the Company whether instructresses get to know the names of the customers?

760 A. Oh yes, that is a very, very important part of their job.

As a matter of fact, when a girl is trained we do stress the fact that knowing the member's name is most important.

Everyone likes to hear their name.

Q. Would you normally expect that an instructress would know many names of many members? A. Absolutely, yes.

Q. Do you recall an incident some time in January where Joan Holand related to you an occurrence that happened, with any occurrence that happened? A. Yes.

Q. With respect to the gym floor? A. Yes.

Q. About when was this conversation? A. I would say it was the second week in January, around the 8th, 9th, something like that.

Q. What did Joan Holand tell you?

MR. BLYER: Your Honor, I would object. Joan Holand is here and has been here throughout.

I suspect she will be called.

She is certainly the most witness to testify to this.

This just merely corroborative and it is not certainly reliable.

761 It is unreliable testimony in view of the fact that we are going to have Joan Holand testify.

MR. MONAT: Your Honor, I am not asking the question now for the proof of the matter but only to show this witness' state of mind.

It is going to be relevant to certain conversations that I believe Debbie Caron testified to.

JUDGE MALLER: State of the witness' mind in what respect?

MR. MONAT: Why she made certain statements to Debbie Caron at a later time.

JUDGE MALLER: If it forms the basis of action taken by this witness her testimony is admissible, not as the truth of the matter but as to the basis for any actions she may have taken.

MR. MONAT: That is why I offer it.

JUDGE MALLER: To that limited extent the objection is overruled.

Q. (By Mr. Monat) What did Joan Holand tell you?

A. Joan Holand told me that she went on the gym floor and Debbie Caron was working with two or three members and she was not working with them the way the instructresses are taught to work.

As a matter of fact, she was sitting on the equipment just looking

762 rather bored so Joan Holand went over to her and said to her "Debbie, would you mind standing up, please, and working with the instructresses -- the members, rather, the way you have been told to work with them and servicing them properly?"

Debbie turned around and use some profane language in reference to myself.

Q. Did Joan tell you what the profane language was?

A. Yes, she did.

Q. Would you tell us what Debbie had said to Joan?
A. "Go fuck Anita Katz."

Q. Do you recall a telephone conversation, a conversation subsequent thereto with Debbie Caron in reference to attending college of some kind? A. A phone conversation.

Q. A personal conversation? A. Yes, I did -- I do.

Q. Would you tell us how much after this information you received from Joan Holand was this conversation with Debbie Caron?
A. I would say maybe a week or ten days afterwards.

Q. What did Debbie say to you and what did you say to her?
A. Debbie asked to speak to me in the office and she said to me she couldn't quite understand why she only had received $10 for her
763 participation in the contest and she wanted to know who was responsible for deciding the amount of money.

I said to her quite honestly, I said, "Debbie, if it was up to me," I said, "I wouldn't give you anything," I said, "Because you have not been working the way that you used to be working."

I was referring specifically to the situation that happened that evening with Joan Holand and the fact that the girl never bothered calling in if she was late or if she was off, and I felt that that was not the way to conduct yourself.

Q. Did you use the term you wouldn't give her one red cent?

Do you recall using that phrase? A. No, I didn't use that at all.

Q. Do you recall a time when you had any meeting with any of your instructresses at which the status of Joan Holand and Dee Arnott was discussed? A. Yes.

Q. Do you know when that was? A. Yes, I would say it was approximately around the 25th of January.

Q. What was the purpose of this meeting? A. The meeting had many purposes.

764 One of the things we were discussing was how the new girls were enjoying working for the Company, working on the floor.

Excuse me, did you ask me something?

Q. No. A. How they were teaching their classes properly and how they were working.

We also discussed guest procedure which is a vital part of our business, and I also informed the full time girls that both Joan and Dee were going to be in training for a position as a floor manager and assistant floor manager and I would hope that everybody would cooperate and would work with each other.

Q. Did you say who would be which at that time? A. No, I did not.

Q. Was there a time when they did become floor manager and assistant floor manager? A. Yes.

Q. Do you remember when that was? A. I believe it was around the 8th of February.

Q. Do you know if they wore any badges or pins? A. Yes.

Q. Do you know when they started wearing those pins? A. Yes, the day that they were going to be -- that they were floor manager and assistant floor manager.

765 Q. What would the pins say? A. It says their name and the title of their position.

Q. Would you indicate on the time sheets here or payroll records, whatever we may call them, which is Respondent's Exhibit No. 9 for identification, if it shows at all when Joan Holand actually became the floor manager? A. Yes, the week ending February 8th which is a Friday.

That Sunday, February 3rd Joan Holand was floor manager.

MR. BLYER: Your Honor, I move that the answer be stricken.

It is not responsive to the question.

I don't see how the payroll schedule reflects that at all.

JUDGE MALLER: Which payroll record were you referring to, the week ending --

THE WITNESS: February 8th.

JUDGE MALLER: Overruled.

Q. (By Mr. Monat) Mrs. Katz, would you just point out to the General Counsel where there is an indication of floor manager? A. Yes, there is a title on top of the girl's name.

It says floor manager on the very top and then it says Joan

766 Holand and the next line says assistant floor manager, Dee Arnott.

Q. Did Joan Holand prior to becoming floor manager have any authority to hire or fire any employees? A. No, she did not.

Q. Or to suspend or discipline employees? A. No.

Q. If she had any problem on the floor was she able to take independent action on her own and do something about it? A. No, she was not.

Q. What would she do? A. She would contact myself.

She always knew where I was.

If I wasn't in the Little Neck gym I was always easily available.

Q. Did Joan Holand get a raise for being floor manager? A. Yes, she did.

Q. Do you know if there is an indication of that on any of these payroll records? A. Yes, it is on that same payroll week ending February 8th.

Joan Holand went up in her salary and there is an R circled which shows that she had just gotten her raise.

Q. Approximately when did you stop spending a lot of
767 time at the Little Neck gym and resume your singular role as assistant service supervisor? A. I would say sometime in mid-February.

Q. Do you recall testimony by Rolinda Antone, do you remember her testimony about your calling her away at some point from Debbie and Paulette? A. Yes, I remember it.

Q. Do you recall any particular time where you specifically recall you called Rolinda away from Paulette and Debbie but then had nothing to say to Rolinda? A. No, I do not.

Q. Do you ever call your instructresses over to speak to them on the gym floor? A. Yes, I do.

Q. Did you ever call Rolinda specifically just to keep her from talking to Paulette and Debbie and then not tell her anything? A. No.

Q. Would you ever talk to Rolinda in the course of an evening? A. Yes, certainly.

Q. What kinds of matters might you discuss? A. Any kinds of matters that would be pertaining possibly to the members, to a class or anything.

768 Q. Is there anything unusual about calling an instructress over and speaking to her? A. No.

Q. How many or how often of an evening would you speak to these instructresses? A. Very frequently.

Q. Would you tell us what is the mopping involved so it is clear?

JUDGE MALLER: The what?

MR. MONAT: The mopping job.

A. Yes, there's a small portion in the main gym that has a tile area and that is the area that goes around an area in the gym that all the instructresses damp mop at the end of the evening.

Q. Is there anything you have to move to mop that?

A. Not really.

It is a very simple thing. You just take a mop and run it through.

Q. Any equipment that is moved at all? A. There is equipment there.

Sometimes girls prefer to move the equipment.

It is very easy. It just slides and sometimes the girls prefer to go around it.

Q. There was some question this morning about the statistics sheets.

That is Respondent's Exhibit No. 11, I believe.

769 There was some talk about how all the writing appeared to be the same.

Can you explain, have you had a chance to check into that?

A. Yes, certainly.

When the count is taken during the day any instructress can put the count down under the supervision of a floor manager.

Therefore, you have all kinds of handwritings.

The paper gets sloppy.

Sometimes there is an erasure and the office will not accept sloppy paper that cannot be read thoroughly.

So what happens, one girl, when the paper is complete, is assigned to just copy the numbers that are there.

That neat copy will go into the main office.

Q. Just to avoid any suggestion or innuendo here, were any of these statistics sheets prepared just for purposes of this case, just to -- A. No, not at all.

Q. Are these the ones that were made and kept as of last December and January? A. Yes, these are the original copies that were sent into the office.

Q. Did you at any time ever tell any employees that they
770 should not associate with Debbie and Paulette? A. No, I did not.

Q. Or do anything to actually prevent employees from talking to Debbie or Paulette? A. No.

MR. MONAT: I have nothing further, Your Honor.

I think there is one little piece of paper which we don't have here and I may have to put it in at a later point in the hearing through this witness, but aside from that I have nothing further.

I would like to renew my offer of Respondent's Exhibit No. 9, the payroll time sheets.

MR. BLYER: I have no objection, Your Honor.

JUDGE MALLER: Very well, Respondent's Exhibit 9 is received in evidence.

(The document above-referred to heretofore marked Respondent's Exhibit No. 9, was received in evidence.)

JUDGE MALLER: We will take a recess at this time.

(A short recess was taken.)

JUDGE MALLER: On the record.

The hearing will be in order.

You may cross-examine, Mr. Blyer.

CROSS EXAMINATION

* * * * *

771 Q. (By Mr. Blyer) When you were acting floor manager at Little Neck you were there quite frequently? A. Yes, I was.

772 Q. Whose job was it to make sure those notations on the workout sheets were made? A. Either the floor manager does it or she will assign someone to do it and then she will check to see that it is done properly.

Q. What did you do when you were the floor manager there? A. I did just what I said now.

Q. What was that?

Did you fill them in yourself or assign someone? A. Either I filled them in myself or I assigned someone to do it and then I would check to make sure that it was correct.

Q. Who was it that you assigned in this period to do it, when you didn't do it? A. It would be either one of three fulltime girls.

Q. Who would that be? A. Ellen, Joan or Dee.

Q. Joan and Dee had just become employed; is that correct? A. That is correct.

Q. What is the date on the first of those sheets, the earliest date? A. 11/7.

Q. Then you would check them after they would fill them in?

773 A. Correct.

Q. What would you check for? A. To check to see if it was accurate.

Q. How would you know if it was accurate? A. Because cards were not then filed, the cards were still there.

Q. Did you count the cards? A. We counted them and just checked to see if they did it correctly.

Q. What was the purpose of having them count the cards in the first place? A. Well, that is part of whatever, what everybody learned to do when they work for Jack LaLanne as full time instructresses.

There are many things involved. To count the cards properly, to make sure that they are checked properly and to make sure that they are filed properly.

Q. You mean even instructresses, as part of their job, count cards? A. There are full time instructresses that do it. If someone is in training for possible floor manager that is part of her job.

There is a certain amount of paper work that she has to learn
774 that she is responsible for and this is one of it.

Q. Joan and Dee had just started; isn't that right? A. That is correct.

Q. They were counting cards too? A. Yes.

Q. Isn't it true that frequently instructresses, after counting cards, would immediately refile them before you even saw them? A. No, it is not true.

Q. They would always hand them to you for recount? A. No, the process that usually occurred was that they counted the cards.

After they counted the cards the cards had to be checked thoroughly to see that they were filled in properly, to see that there wasn't any missing information.

Only after the cards were checked were they then filed.

Q. What kind of information are we talking about? A. These are members' program cards and on the card goes the member's name and her phone number, her filing number, her measurements, her goals, the visits that she attends, the amounts of repetitions that she will do and exercise, so before it is filed it will be checked to see that all this information is correct.

775 Q. Most of that stuff that you just talked about is on the card when they first come in? A. Yes, but very often some kind

of information is left off, and rather than refile it, the missing information -- we try to get the missing information at that point or we attach a note onto the program card.

The note is a small sheet of paper that is just an adjustment slip.

On this adjustment slip you would check off what information is missing.

When a number next comes in it is very easy to then determine what information is missing by looking at the adjustment slip and then you fill it in.

Q. When individuals first come in, correct me if I am wrong, the name is put on the card, their address and these other things about measurements and so on and so forth? A. Not their address, their phone number.

Q. This is done on a regular basis? A. Yes.

Q. So you don't have too much of that being left off? A. No, but there are occasions when a member was not measured, when she was supposed to either by her request --

Q. Wouldn't that card, when something like that was noticed, wouldn't that be put on the side and not refiled with a little note on it? A. Yes.

776 Q. So that there really was no need to go through the cards each time to see if there was anything missing? A. Yes, there was.

Q. Wouldn't that be already be put on the side? A. Not necessarily.

When the cards are replaced from the baskets, they are removed in very large amounts, and they could be removed in 30, 40, 50 cards.

Each of those cards are checked thoroughly, both the front of the card and the back of the card.

If the card is in perfect order for filing it goes in one position.

If it is not in perfect order then it goes into another position or the adjustment slip is put on and at that point and then it is put in the file for filing.

Q. You are saying that with each of these cards, after you had assigned Dee or Joan or Ellen during this period we are talking about when you were floor manager, for each of these cards, after they had counted them and made these checks you would do the same? A. I would do it for a while, yes, just to make sure that it was being done properly because I was the floor manager and I was responsible for what was happening.

Q. Well, it was really nothing for you to check, was there, with regard to the information about how many repeats, they were doing on certain exercises and so on? A. Yes, there was, certainly.

Q. You were checking for the accuracy of that information, were you? A. Yes.

Q. You knew what they were doing, the members, out on the floor? A. Well, I could tell if a member was on a certain visit approximately how many repetitions she should be doing.

Q. How much maybe she should be doing but you couldn't tell how much she did do? A. No, but if a card was marked I would point it out to the new girls so that they in turn when they checked the cards, they would look at this.

Q. My question was you don't check for the accuracy of that figure? A. Of the figure itself? If -- may I explain it?

Q. Well, I'm asking you do you have any way of knowing how many whatever -- A. How many exercises?

Q. A member did?

778 Do you have anyway of knowing? You don't watch them?

A. On the card it says how many exercises they are assigned.

It may be nine exercises or 12 exercises.

Q. But I'm saying you don't check for the accuracy of the number that is put on by the particular instructress, do you?

A. I check to see that the repetitions, the amount of times a member will do an exercise corresponds with the visits that she was here.

You see, the repetitions are increased every fifth visit if a member is capable of increasing it.

* * * * *

Q. Do you recall receiving a telephone call from Paulette Anderson on the day of the election in the A.M. informing you that she would not be at work that day because she was acting as an observer? A. Yes, I do.

Q. Isn't it true during that same conversation she also told you that Debbie Caron would not be in that day because she too was acting as an observer? A. No, she mentioned no name of Debra Caron, absolutely.

Q. She didn't mention anything to you to the effect that Debbie will be calling you later but she wants to let you know that

779 morning so you could perhaps rearrange your schedule if Debbie should not come in?

She didn't tell you that? A. No, she didn't.

Q. Did you ever learn that Debra tried to reach you three times and was cut off by the receptionist on that day? A. No. I learned --

Q. Corine never told you? A. No, Corine never told me anything.

Q. At that time Ellen Brezenoff was in fact performing certain tasks as a floor manager in your absence; isn't that correct? A. No, she was not performing any tasks as floor manager.

Q. When you weren't there and I assume you were not there everyday; isn't that correct? A. I was there 90 percent of the time.

Q. You weren't there on Sundays normally, were you? A. There were many Sundays that I did work during that time but not every Sunday.

Q. And there were times that you were in the office doing thing; you were in charge of ten different locations, weren't you?

780 A. Yes, but I was able to pace myself or I was not in touch with the other gyms until it was rather late in the evening or early in the morning, so therefore most of my time, I would say that 75 to 85 percent of my time was directly the gym floor observing all the girls and working with the members myself.

Q. Forget about quibbling about how much you were not there.

Let us assume 25 or 30 percent or whatever you were not there and someone had to be in charge of the floor; isn't that correct? A. Correct.

Q. That was Ellen Brezenoff; isn't that correct? A. Yes, Ellen was the only girl there at the time.

She was with us the longest.

Q. Do you remember purchasing a cake? A. I certainly do.

Q. That cake had to, of course, do with the fact that you won the election; isn't that right? A. Correct.

Q. And the election was or a tally of ballots was made on December 11th, the 13th? A. Right.

Q. A Thursday? A. Yes.

781 Q. When did you buy the cake? A. December 14th, Friday.

Q. On the 14th? A. Correct.

Q. And you brought it to work that day; isn't that correct, on the 14th? A. Yes.

Q. Many of you got together in the nursery and ate the cake; isn't that correct?

MR. MONAT: Objection to the "Many of you." I think it is too indefinite.

JUDGE MALLER: There is no harm in that. Overruled.

Q. (By Mr. Blyer) Isn't that correct? A. Could you repeat the question?

I'm sorry.

Q. You ate the cake on Friday, a number of employees? A. Yes, we did.

Q. Now, on Thursday, the last day of the election, were you at work? A. No, I wasn't.

Q. Were you at the Douglaston location? A. No, I was not.

Q. You were there on Friday, however? A. Yes.

Q. Were you informed that Rolinda Antone was sick on

782 Friday and not able to come in? A. That Friday night?

Q. Yes, the 14th. A. That was December 14th.

No, I was not informed.

As a matter of fact, I don't think Rolinda was working that Friday night.

Q. I agree with you.

I would like you to take a look at Respondent's Exhibit 9, the schedules.

JUDGE MALLER: For what week?

MR. BLYER: This is for December 14th.

A. Yes, she was, that was my mistake.

She was working that evening.

Q. Before we get into that on Thursday, did you learn that Rolinda Antone just came into vote with her child, she was very ill?

Did you learn about that? A. No.

Q. She wasn't scheduled for work on that Thursday the 13th?

A. Rolinda never worked on a Thursday.

Q. And at that time on Friday was she schedule to work?

A. During that time? Yes, she was.

783 Q. I show you Respondent's Exhibit 9 for the week ended 12/14/73.

Take a look at the original.

Do you notice that the whole sheet is in blue ink but just this inclusion on Friday for Rolinda Antone working there from 6:00 to 9:00 for three hours and total hours worked 11 is in black ink.

Do you know how that occurred? A. Yes, it is very possible.

Sometimes --

Q. I asked you if you know? A. I don't remember completely but I can tell you how it can be done.

Q. No, no, I'm asking you if you know why that -- A. I know why it is in black ink?

Q. Yes. A. No, I don't know why it is in black ink.

Q. Did you do it? A. Yes, it looks like my handwriting.

Q. Did you, but do you know? A. I can assume why.

Q. I don't want you to assume why. A. No, I don't know why.

Q. Debra Caron during this period of time, was she assigned on Friday nights to work? A. No, she was not.

784 Q. I notice here that Debra Caron it appears, according to this week ending 12/14/73, was not in on Friday night. A. That is right, she was not scheduled to work then.

Q. I know she was not scheduled but it doesn't show she was in even if she was not scheduled.

You call in people from time to time when they are not scheduled; isn't that correct? A. No, this was the schedule.

Q. What I'm asking you, even though people are scheduled on certain days there are occasions when you call them in?

A. If a girl is out ill, to replace that girl, yes, but Debbie Caron's schedule was Monday and Wednesday.

Q. I understand that.

Do you recall calling in Debra Caron for that Friday?

A. Absolutely not.

Q. Do you recall her sitting in the nursery when the cake was eaten? A. I don't recall that at all.

Q. Do you recall the members kidding her about the cake and about losing the election and so on? A. No.

Q. You don't remember her being there on Friday?

A. Not at all.

785 There would be no reason for her to be there Friday night.

She wasn't due to work.

Q. I understand she was not scheduled, but didn't you call her in to fill in for Rolinda Antone? A. No.

Q. Rolinda was there, you believe? A. She was down on the payroll, yes, she was there.

Q. I'm asking you if she was there? A. Yes, she was there.

* * * * *

786 But you remember it was a busy night, the 12th? A. Yes, we were very jammed in the gym and we were short two girls and we were very busy.

Q. On the 12th of December? A. That is correct.

* * * * *

Q. Were you here when Debra Caron testified that you called her into your office to discuss with her the fact that she had not called in, allegedly, had not called in on December 12th? A. Yes.

Q. Do you remember her testifying she said that occurred
787 on the 17th of December, a Monday? A. That is correct.

Q. It is your testimony that that occurred on the 19th; isn't that right? A. Yes, it is.

Q. And you recall it was Paulette Anderson at work that day on the 19th? A. Yes, I think she was.

Q. During this period of time, the last two weeks in December, perhaps the first week in January, what time did cleaning activities begin? A. They can start anywhere --

Q. No, what time did they begin? A. I'm trying to tell you.

Q. You were saying they can. A. They would start at 8:30, between 8:30 and 10:00 the various cleaning duties were done.

Q. Normally isn't it true that you don't begin cleaning duties until most of the members are gone? A. Yes.

Q. But during this period you started them at 8:30; is that correct? A. We always start around the same time.

It was not during this period.

Q. There wasn't any change? A. No, there was no change.

788 Q. There came a time when you placed a date in mid-December to early January that Debra Caron and Paulette Anderson came into see you and told you, according to your testimony, that they were being harassed, something about additional cleaning duties and calisthenics classes? A. Correct.

Q. And your response was you couldn't understand why? A. Right.

Q. You were not the only one assigning people to calisthenics classes and to cleaning duties and giving out assignments to instructresses, were you, at the time? A. I would say that I was doing it a considerable amount of the time.

As I said before about 85 percent of the time, and whenever there was a calisthenics class given I always oversaw everything.

Q. Did you ever at anytime call in Ellen Brezenoff or anyone else who was doing these assignments other than yourself, regarding these complaints that Debra Caron made and Paulette Anderson made? A. Did I call her in?

Q. Yes, to discuss it with her, they were being assigned these additional duties? A. No.

789 Q. Did you think these were serious matters if they were true? A. Quite honestly they were being given the same that they were always being given and I didn't understand what their reason was for feeling this way.

Q. You claim you gave them the same but do you have any knowledge when you were in the office or when you weren't there

on Sundays what in fact they were getting to do? A. I have knowledge, yes.

As I said to you before if Ellen wanted to give them anything I always saw what was involved.

If there was an additional calisthenics class I okayed it.

Q. Even if you weren't there? A. If I was in the presence of the gym, I was there, I could be easily reached.

Q. There were times when you were not in the gym I'm sure.

I think we already established on Sundays you weren't there from time to time? A. There were some Sundays, yes.

Q. And I'm sure there were other days that you were not there, that your responsibilities, which seem to occupy your full time when you were not a floor manager at Douglaston, that these
790 responsibilities took you away from your job as a floor manager at Douglaston from time to time; is that correct? A. Partially.

Q. During those times there were other people doing the assigning, whatever it was, calisthenics classes, cleaning up duties, the number of members, which members, right, to take around and so on? A. Yes.

Q. At any time did you check with any of these people to see whether or not there was any truth to what Paulette Anderson and Debra Caron had told you? A. No, I don't believe that I checked at all because as far as I was concerned, it was the way it had always been and there was no reason to check into it.

Q. Well, Paulette Anderson at the time was the most experienced instructress, part time or full time, that Douglaston had; isn't that right? A. Part time instructress, yes.

Q. She had been there longer than any of the full timers? A. That is correct.

Q. Debra Caron had been there a substantial time too?

A. Correct.

Q. Did you think that they knew what they were talking about?

791 A. Yes, but when they sat down with me to explain it I couldn't understand.

I even told them, I said, "Girls, I don't know what you are referring to.

"We all clean, we all take workouts crew.

"Some days are heavier than others. We all have additional classes sometimes," and it was par for the course.

Q. I would think if you didn't understand it it was all the more reason to check into it.

But you didn't, did you? A. No, I didn't.

Q. At this time didn't you also state to Paulette Anderson that in fact you understood that she and Debra were getting more calisthenics classes because the members liked it?

Didn't you concede that in fact they were getting more calisthenics classes? A. No, I don't recall anything.

Q. You didn't tell them that? A. I don't recall anything like that at all.

Q. You mentioned both Debra and Paulette received four hours the Monday before Christmas and the Monday before New Years.

792 They were scheduled to work those evenings? A. Right.

Q. Rolinda Antone, was she scheduled to work those evenings?

A. Yes.

Q. She got paid too? A. Yes.

Q. Anyone else who was scheduled to work those evenings, did they get paid? A. Anyone who was scheduled to work.

Q. The year before you said that didn't occur? A. No.

Q. The year before did you have a Union election?

MR. MONAT: Objection, Your Honor.

JUDGE MALLER: Sustained.

Q. The workout sheets that we have in evidence, Respondent's Exhibit 11, do they accurately reflect the number of people that in fact worked out on each of those days in the gym? A. Yes, they do.

Q. What about the individuals who were not guests, who were guests, but other than one-day guests? A. These people were guests for one month possibly, and this count was then put into the count that you see over here.

That was --

793 Q. What do you mean over here? A. May I show you?

That was recorded in the daily workout count as a regular member.

Q. Didn't you have a separate guest control sheet?

A. For what are you referring to?

Q. Yes? A. No.

Q. So these one month guests you had separate cards made out for them? A. Correct.

Q. They were counted as well? A. Yes.

Q. What about individuals that came down just for calisthenics classes, would they be included in that workout sheet? A. Not necessarily.

These were only people who came into the main gym to workout and did not include those who just participated in the calisthenics classes.

Q. Aren't there also people who come down and do not go through their individualized programs? A. A few, yes.

Q. That come down just to do whatever they feel like it?
A. In the main gym?

794 Q. Yes. A. Very few.

They will often just ride on bicycles and go directly into a calisthenics class.

Q. So there were other people that use the main gym or use the room next to it, the ballet room for calisthenics classes, and for doing their own thing that are not reflected on those workout sheets?
A. They were in the calisthenics classes which are not reflected on the workouts, so okay.

They were not people who were doing their own thing in the main gym.

Q. Where would they do their own thing? A. They wouldn't do their own thing.

Q. Aren't there people who come down and just use certain exercise machines but just say, "Look, I don't want to go through my program?" A. Our policy is that any member who comes into the main gym must be supervised and placed on the supervised exercise program because we do have equipment and we do have areas in the gym where a member can hurt herself if she is not supervised.

So that this count is an accurate record of what comes into the main gym only.

795 Q. So you don't permit then an individual who is a member who wants to just -- A. They --

Q. Let me finish the question, who wants to use the machines or any of the other facilities in the main gym but without going through it, without her card being pulled and you don't permit them to do that?
A. I'm sorry, would you repeat it again?

Q. You don't permit a member to come down and just use the facilities without a card being pulled? A. No, it is not that

we don't permit it, we discourage a member from using the facilities in the main gym unless she is being supervised.

The members of our Little Neck Club will abide by that and understand the reason why.

Q. But there are of course members who don't abide by that? A. A handful, but just a very, very small amount.

Q. Normally your hours of full timers are what? A. Our normal hours?

Q. For full time? A. 10:00 to 10:00.

Q. What days? A. Well, it varies with each gym.

You are referring to --

796 Q. I'm just talking about Douglaston. A. Okay, it is just 10:00 to 10:00 Monday, Wednesday and Friday and Sunday 1:00 to 5:00.

However, we have different schedules also and we have a girl who works Monday, Wednesday and Friday -- Monday, Wednesday, I'm sorry, from 10:00 to 10:00 -- may I finish?

You look like you are going to ask me something.

Q. Go ahead. And Thursday from 1:00 to 6:00, Friday from 3:00 to 10:00 or she might work Monday, Wednesday, Friday, from 10:00 to 10:00, Thursday, 1:00 to 6:00 and not work on Sundays.

Or she might work Monday, Wednesday, Friday from 10:00 to 10:00 and Tuesday from 2:00 to 8:30.

Q. But generally most of your part timers or rather, full timers work 10:00 to 10:00 Monday, Wednesday and Friday, is that right? A. That is a general statement.

Q. And on Sunday what hours do these people work? A. 1:00 to 5:00 usually.

Q. When Jackie Balalaos was hired, when she was first hired, wasn't she told that these were her hours? A. No, she was not told that at all.

Q. Why then on the first Friday does she work 10:00 to 10:00?

797 A. Very simple.

Okay, she started on Wednesday.

In order to give a girl a full idea of what it was all about, rather than have her start then on Thursday and only work half a day Friday, I felt it would be more beneficial to her to have two full days under her belt.

The work she started was in the middle of the week and she didn't start on a Sunday or Monday, she started midweek.

Therefore, she worked Wednesday a full time day and Friday a full day.

JUDGE MALLER: Would you clear up something please?

I understood that Tuesday and Thursday were days for men.

THE WITNESS: Yes, it is.

JUDGE MALLER: What would the occasion be for an instructress to be there on Tuesday?

THE WITNESS: We have on-going calisthenics classes there in our ballet room.

See, the men use the main gym on Tuesday, Thursday, Saturday and Sunday morning and while the main gym is in use there are yoga classes and belly dancing classes and calisthnics classes going on in the ballet room which is adjacent to the main gym.

798 Therefore we do have an instructress there teaching several calisthenics classes.

JUDGE MALLER: Thank you.

Q. (By Mr. Blyer) Didn't there come a time shortly after Jacqueline Balalaos was hired that you told her that you wanted her to switch her hours and from now on it would be Friday 3:00 to 10:00 and Thursday 1:00 to 5:00 or 1:00 to 6:00, and that she opposed that,

told you that it was difficult for her, that she had a child? A. I told Jackie this before she actually started work.

Q. When she started officially on that Wednesday I told her that for this week she could work Wednesday and Friday, but that Sunday her schedule would begin and she knew what her schedule was.

Q. You said it was essential for her to do that, isn't that right, to work those hours? A. That was a full time schedule that I offered her, yes.

Q. And she said to you that it was quite inconvenient for her but she would check to see if she could get a babysitter?
A. She said she might have a problem with a babysitter but not to worry about it, she would take care of it and I said fine, and that was the end of our conversation.

Q. On Thursday she replaced the hours that Paulette worked; isn't that correct? A. Yes.

Q. During those hours Jacqueline gave calisthenics classes, isn't that right? A. Right.

Q. Had she ever given calisthenics classes before?
A. She had given calisthenics classes the Friday of the first week that she started.

Q. The Friday of the first week? A. And she observed many calisthenics classes.

Jacqueline was a member so she was very familiar with how the classes were being taught.

Q. But it wasn't too long before you replaced her; isn't that correct? A. Pardon me?

Q. It wasn't too long before you took those calisthenics classes away? A. From Jackie?

Q. Yes. A. After a short while Jackie had a problem with her sitter and she did not work on Thursdays anymore.

Q. Didn't there come a time that you made her receptionist or you told her she has to be a receptionist? A. That was at a considerably later time than that.

800 Q. You mentioned that the reason for your requesting or imposing the hours on Jacqueline that you did, that is that she should work on Thursdays, and give these calisthenics classes, call inactives -- by the way, those were the same things Paulette did; isn't that correct? A. Correct.

Q. And the other things you talked about, giving tours, taking renewals, helping assistant managers, that too was what Paulette did when she worked on Thursdays? A. Yes, whoever worked on Thursdays, that would be their responsibility.

Q. You said you had the same system on Tuesday to some extent where you had a full-time girl come in on Tuesday and work during the day extending into early evening, and the reason you found that this worked out very well, was because there was no floor manager there, is that right, and your full timers seemed to be career oriented? A. Correct.

Q. And very responsible? A. Right.

Q. Paulette Anderson, she had been there for over three years, right? A. Right.

801 Q. And no one had been there any longer than she, is that right? A. As a part time employee.

Q. Or full time at Douglaston? A. Right.

Q. Responsible? A. Pardon me?

Q. Was she responsible? A. Yes, she certainly was responsible.

Q. Was she devoted? A. She was devoted as any part timer could be.

She couldn't give any more hours and she didn't know the members possibly as well as a full time girl might.

Q. What do you know about Jackie's devotion?

JUDGE MALLER: Jackie?

Q. (Continuing) -- Balalaos? A. Jackie was going to be given an opportunity to incorporate this in her schedule.

It worked so successfully on the Tuesdays that we felt that it would also work successfully on Thursdays.

Q. But part of the reason you said was because you found that it was an area where you did have devotion here.

What did you know about Jackie that made you believe that

802 she was devoted, especially in view of the fact that Paulette had shown devotion by the length of her employment, by the quality of her work? A. I didn't know anything about Jackie's devotion.

As I explained to you, we were going to be doing this as a new schedule.

It was something that we thought would work out well since it had worked out before.

Q. When it didn't work out with Jacqueline you didn't offer Paulette those hours back, did you? A. No, we offered it to the next full time girl.

Q. Jeanne Murphy? A. Correct.

Q. She too opposed it? A. No, she did not.

Q. She liked it? A. She said fine.

She didn't like it nor dislike it.

She just said okay.

Q. How long had she been with the Company at that time?

A. Jackie and Jeanne started at the same time.

Q. So she too --

JUDGE MALLER: I wish you folks would use the last names because people reading this transcript for the Board will be awfully confused.

803 Q. (By Mr. Blyer) Jeanne Murphy had been there as long as Jacqueline? A. Right.

JUDGE MALLER: Use the last name.

Q. Jacqueline Balalaos? A. Yes.

Q. You had no way to know how devoted Jeanne Murphy would be? A. No, I had no way of knowing.

Q. You were just taking a chance like with Jackie Balalaos? A. We would try something that we felt was successful prior on Tuesday and we thought it would work out very well on Thursday.

Q. When did you inform Paulette Anderson -- first of all, when did you inform Paulette Anderson of the switch? A. Monday, January 7th.

Q. Did you inform Paulette Anderson of this new policy relating to full timers? A. Yes, I did.

Q. Did you explain to her what it was all about? A. Completely.

Q. You told her that she was being replaced because she

804 wasn't devoted enough? A. No, I did not say that.

I told her that we were going to be incorporating the new full time schedules with the Thursday hours since it had worked so well on Tuesday.

Paulette had told me she had understood our reasoning for it and she could understand why we would want a full time girl there.

Q. I'm sorry, go ahead. A. At the same time I was able to offer Paulette the same hours on another night, which I did.

Q. What did you tell Paulette was the reason why she was being replaced? A. I just explained to you.

Q. What was it? A. That we would like to incorporate the new full time schedule with the Thursday which Paulette was working.

Q. But -- A. That is what I told Paulette.

Q. But Paulette was quite aware of the normal hours that full timers work.

Didn't she ask you, "Why are you putting a full timer in here now?" A. No, she didn't ask me.

805 She said she could understand if it worked well on Tuesday what our reasons would be and we had a full time girl on Tuesday for quite sometime, over a year.

Q. Did you explain to her why it was working well, because of your feeling that a full timer was more devoted? A. We felt that a full timer, yes, I did explain.

I went into the full detail with Paulette as to the reasoning behind it.

Q. It is your testimony she said she understood? A. Yes, she said she could understand from a Company point of view why we would want a full time girl in there on a Thursday when the floor manager was not there, to see to it that things were supervised properly.

Q. Were you challenging her devotion.

Did she say anything to you about that? A. No.

Q. Did she ever in any way show that she could not work out without a floor manager? A. Did she ever?

No, she didn't ever but, as I said --

Q. So she was -- A. We were trying to incorporate the new schedule.

We felt that it was successful.

We had the opportunity at that point to have two full timers trained in Little Neck which were Jackie Balalaos and Jeanne Murphy.

806 Since we had this opportunity we felt it would be good to incorporate that part time -- those part time hours from Thursday into a regular full time schedule.

Q. But it is your testimony that Paulette Anderson responded to you after you gave her all the reasons why you were going to do this that it was quite all right and that she understood the policy and the reasoning behind it? A. Right.

* * * * *

807 Q. (By Mr. Blyer) Mrs. Katz, why was your testimony regarding Debra Caron's hours being reduced from eight to six in late February, what was the reason for that? A. We had just acquired a new girl from another gym and who was going to be working as receptionist-instructress.

As a matter of fact, we were going to try to see if all the instructresses could work as receptionists.

Therefore, it was unnecessary for us to have a girl come in between 5:00 and 6:00 since we did have plenty of staff.

That was a very slow time at the Little Neck gym, so we changed Debbie's hours from 5:00 to 9:00 to 6:00 to 9:00.

Q. What was the date on that?

* * * * *

808 Q. You went through a number of names, individuals who
809 had transferred from one of the locations run by Jack LaLanne to another.

Do you recall during the recitation of those names ever mentioning any employees who were transferred out of Douglaston? A. Yes.

Q. Which ones were they? A. Edie Smithwyck.

She was transferred from Little Neck which is Douglaston to Madison Avenue.

Q. What job did she have? A. Full time instructress.

Q. Is that the only one of all the names you listed that was transferred out of Douglaston? A. No, Elicia Graso was transferred from Douglaston to Woodmere.

Q. What was her job? A. Full time instructress.

Q. Anyone else? A. From Little Neck?

From Little Neck out or into Little Neck?

Q. Out. A. Out from Little Neck?

Wendy Lord at one point was transferred from Little Neck to Madison Avenue for about a week, I believe, to help out there.

810 Q. What was her position? A. Instructress.

Q. Full time also? A. Yes, full time.

Q. How long did Edith Smithwyck go for? A. How long was she there?

Q. Was it a permanent transfer? A. Yes, hers was a permanent transfer.

Q. And Elicia Grasso? A. Must have been about a week and a half.

Q. Then she came back? A. Yes.

Q. And Lord, Wendy Lord? A. Also about a week to two weeks and then returned.

Q. And then she went back? A. Right.

Q. With regard to the transfer to Woodmere, that eventually was accomplished by Paulette Anderson's transfer?

First, before that, do you recall a time in the past that Paulette Anderson transferred for about a month from Douglaston to Lefrak? A. Yes, that was quite sometime ago.

I think this was when I was a floor manager at Little Neck.

* * * * *

814 Q. Originally she worked at Woodmere for approximately two weeks? A. I believe it was a little longer than that.

Q. Well, didn't she got there and work for two weeks, come back and then she told that she had to go back again for another week? A. I believe what had happened was she worked there Monday and Wednesday and when I had spoken to her I had told her that if Sunday presented a problem she could continue to work there Sunday at Little Neck if she wanted to, or she could work at Woodmere, but she worked I believe it was the three weeks at Woodmere.

Q. You don't remember her coming back to Douglaston after two weeks? A. For any length of time?

For another week? I don't think so.

I believe that she worked at Woodmere for the three weeks.

815 Q. I agree she worked for three weeks but wasn't it the understanding that she would only have to work two weeks there and then there was a sudden departure of an individual and she stayed on for another week? A. The understanding was that Paulette would help us out.

Now, when I spoke to Paulette that morning, which was February 4th, she asked me how long and I said I don't know.

It would be for a few weeks, please call Gabrielle when you get a chance, Gabrielle was going to go over the schedule with her.

Q. You don't remember her coming back after two weeks feeling that that is all she was supposed to transfer for and then being told she had to go back for another week? A. No.

Q. Thereafter there was an occasion where you needed you say individuals at Madison? A. Right.

Q. This is in March now? A. Yes.

Q. Rolinda Antone, you didn't expect her to go, right, she had a baby? A. Well, I asked Rolinda and my reasoning behind it was --

816 Q. I didn't ask you for your reasoning.

You say you asked her? A. Yes, I did ask Rolinda.

Q. And you said she couldn't go, she had a baby? A. She had a babysitting problem.

Q. And you asked Debra Caron? A. Right.

Q. And she said she couldn't go because of a car problem? A. Right.

Q. Now, what did Paulette Anderson tell you was the reason she didn't want to go to Madison the first time you spoke with her? A. She didn't give me a reason.

She just said she absolutely refused to go anywhere.

Q. She had just gone to Woodmere? A. The month before, yes.

Q. Did you ask her for a reason? A. At that point? No, I didn't ask her for a reason.

Q. Didn't you find it surprising that an employee who always cooperated with you in the past just absolutely without a reason said that she didn't want to go? A. Quite honestly I was concerned about getting help for Madison Avenue and Paulette and I both hung up and

817 I proceeded to continue to speak to my other floor managers and see if we could get some help.

Q. When you say your other floor managers you didn't speak to the floor manager at Douglaston about whether she had any employees for you? A. No.

Q. You spoke to the girls again personally? A. I spoke to the girls there and I spoke to the girls at Lefrak City personally.

Q. At anytime did Paulette Anderson give you a reason why she did not want to go to Madison? A. Yes, she gave me two reasons.

Q. Well, was one of them that it was a matter of principle?
A. Yes.

Q. With regard to the Douglaston spa is it the spa that has the most members of all the other spas that you supervise?
A. I couldn't answer that.

Q. Well, one of the busiest spas? A. I would have to say that probably Madison was the busiest of the spas.

* * * * *

818 Q. I'm talking about in numbers, number of personnel.

If you count one to ten or one to twenty, don't you have more employees at Douglaston that elsewhere? A. At this time, no.

819 At that time we had three part timers which was more than we possibly had at any other spa.

* * * * *

820 Q. Now, do you recall during this period of December and January, '73 and '74, engaging in a number of sales promotions?
A. Yes.

Q. Do you recall one that extended from around early November through December 15th where you were offering renewals for a reduced fee? A. Correct.

821 Q. Didn't in fact occur that that offer was extended beyond December 15th of '73? A. You are talking about renewals now?

Q. Yes. A. Yes.

Q. How much after December 15th could a person take advantage of that renewal? A. I can't remember the exact date but it was extended.

I think possibly to the end of the month.

Q. Isn't it also true that during that period of time you were offering complementary guest visits for one day periods

of time, just for one day? A. No, we always -- a guest is welcome to our club at anytime.

Q. For one day? A. Certainly.

Anytime that was not unusual.

Q. So all times that was true? A. Oh yes, most definitely.

Q. Now, do you recall offering a 30-day guest membership during this period of time? A. Yes.

Q. Which was supposed to expire January 8, '74? A. Yes.

822 Q. Was that extended beyond that date? A. I believe it was.

Q. Do you remember how far an extension? A. I'm not sure.

Possibly to the middle of January.

Q. Most of your members, and I guess most of these guests, is it fair to say, take advantage of the health spa during the time that they are not working? A. Pardon me?

Q. Your members and guests would take advantage of the health spa during the time that they are not working? A. During the time that they are not working.

Q. Right, during the evening hours generally? A. I'm sorry, I misunderstood you.

Not necessarily.

The spa is open from 10:00 to 10:00 and people come in all during that time.

Q. Don't most of your people come in after dinner, 6:00 to 9:00? A. Not necessarily, no.

It is in a suburban area and we have a lot of people coming in between 10:00 and 2:00 in the morning.

Q. I understand.

Maybe in a suburban area and that is all the more reason

823 I would think people would be coming in in greater bulk after dinner from 6:00 to 9:00? A. I would say the evening was certainly just about -- the morning was about as busy as the evening.

You had a lot of housewives that came in in the morning when their kids were at school.

Q. Why were your part timers employed at 6:00 to 9:00 and you had none during the day? A. It was heavier, but I wouldn't say that most of the heavier part was in the evening.

Q. But you say it was heavier than any other part? A. It was heavier to some extent, certainly.

Q. And at that time you had three part timers; is that correct? A. Right.

Q. This period of time we are talking about is mid-December, January, February, March, right? A. Yes.

Q. You had about three part timers generally? A. Yes.

Q. Rolinda Antone had a child? A. Right.

Q. And in March with three part timers you informed your part timers that two of them had to go, right, had to go on transfer elsewhere? A. I informed two of them?

824 Q. You informed one that one had to go to Lefrak and one had to go to Madison.

Weren't you trying to make transfers to both locations? A. That is not correct.

I was trying to get one girl to go from Little Neck either to Lefrak or Madison, not both.

Q. Didn't you tell everyone first that you wanted them to transfer to Madison? A. If they could, yes, but if they couldn't

do that then if they went to Lefrak that would mean one girl, only one girl less at Little Neck.

The girl at Lefrak who was working at Lefrak would to to Madison Avenue.

I was not going to transfer two girls from Little Neck.

Q. Well, Rolinda Antone did in fact go for a week; isn't that correct? A. Correct.

JUDGE MALLER: Go where?

MR. BLYER: To Lefrak.

Q. She came back? A. Yes.

Q. Do you remember she came back prematurely; isn't that correct?

825 You wanted her to stay longer? A. No, she didn't come back prematurely.

She stayed for the week that I had asked her to.

Q. And you only wanted her to stay for a week? A. Yes.

Q. Wasn't it Rolinda who called you and told you that she was having severe parking problems there and did not want to go there any longer and would like permission to come back and you said all right? A. I don't recall anything like that at all.

Q. Debra Caron refused to go to both locations; is that correct? A. Yes.

Q. In the past Debra Caron had never gone to any of these locations that you may have asked her to transfer to; is that right? A. Yes, I believe that is correct.

Q. And Rolinda went for one week to Lefrak? A. Right.

Q. Do you know where Rolinda Antone lives? A. I have an idea she lives in Fresh Meadows, I believe.

Q. Wouldn't you say Lefrak was about the same distance

826 from Fresh Meadows as is Douglaston? A. Yes.

Q. The reasons that were given by Debra Caron for not going were essentially the same reasons as Paulette Anderson gave; isn't that correct? A. That is not correct.

Q. Well, they both gave a reason about transportation, isn't that right, being a problem? A. Well, Paulette never gave me a reason about transportation completely.

Q. Never told you she had no car and didn't want to attempt to borrow a car or didn't want to drive it to the City? A. To go -- are you referring to going to Madison Avenue?

Q. That is right? A. No, she never referred to in anyway like that whatsoever.

Q. But she did tell you she didn't want to travel on the subways? A. She mentioned that she -- there was a problem with her counsin and that is why she was adamant about going on the train.

Q. She was adamant about going on the train and not going on the train? A. About not going on the train.

827 She just didn't want to go any place.

She wouldn't even go to Lefrak as I explained to you before.

Q. During the time that she was asked to go to Woodmere, Paulette Anderson, is it right to say that the other employees had refused to go? A. Yes.

Q. This was as you say during the gas crisis? A. Correct.

Q. There is really no public transportation to Woodmere, is there?

You have to get there basically by car? A. There is a bus that goes to Woodmere, I believe, right along Rockaway Turnpike.

Q. From the Bronx there is no public transportation that you know of? A. No, I'm sure there isn't.

Q. Having come back a few weeks earlier you then asked Paulette Anderson in addition to the other employees to transfer to Madison or to Lefrak? A. Correct.

Q. When Debra Caron and Rolinda Antone said they couldn't transfer to Madison and when Debra Caron said she couldn't transfer to Lefrak, did you give them any ultimatum, did you remark about
828 terminating them? A. No, I didn't.

Q. When Rolinda Antone returned after a week you didn't tell her that, "I want you to stay long r," and give her an ultimatum she had to go back? A. No.

Q. Up until this time Paulette Anderson had been a fine employee, isn't that correct? A. Yes.

Q. You never reprimanded her for any lateness or absenteeism, did you? A. Not to my knowledge, no.

Q. She is the most experienced employee at your Douglaston location? A. She had been with us the longest.

Q. And the most experienced? A. Well, if you think of time as experience, I guess so, yes.

Q. Didn't she think she was a very capable employee? A. Yes, she did her job well.

Q. Didn't you ever observe her calisthenics classes being packed? A. All the calisthenics classes were packed.

Q. Did you observe her being applauded by the members after her calisthenics classes were given? A. No.
829 Q. You didn't hear that? A. No.

Q. Did you ever see any letters that were sent by members praising her work? A. I did not.

Q. Wouldn't you say a big part of your business is renewals? A. Yes.

Q. You are anxious to have people renew? A. Yes.

Q. And that the quality of instruction is a very important factor in that? A. Yes.

Q. Frankly I guess ome of the other spas for the most part have the same equipment as you do? A. Yes.

Q. And only personnel will make the difference? A. Right.

Q. Another big part of your business is attracting new customers? A. Right.

Q. Then again you rely in great part on your instructresses and instructors to persuade new customers that they have a worthwhile gym here and it is worthwhile fro them to come? A. Yes.

830 Q. In fact, a big part of your sales pitch is that they will get individualized instruction from competent instructors and instructresses? A. Not individualized, personal supervision.

Q. Personal supervision.

Didn't Paulette Anderson also do some modeling for advertisements that the Company published? A. Pardon me?

Q. Didn't Paulette Anderson do some modeling for advertisements in newspapers for the Jack LaLanne Health Spas? A. Yes, I believe quite a few gyms did.

Q. I asked you about Paulette Anderson? A. Yes, she did.

Q. Was she paid anything other than her hourly wage for that modeling, if you know? A. I don't know, I couldn't answer.

Q. Do you know how long the advertisements that she posed for ran? A. No.

Q. Is the spring season the kind of season that many of your members come to your health spas? A. Yes.

831 Q. Is it more populated than other seasons, the spring season? A. Spring itself? What do you mean by the spring?

Q. March, April, May? A. I would say.

Q. June? A. No, by May and June it is not that busy. People are looking to get ready for camp and graduation.

Q. March and April it is pretty busy? A. March is busy, February is busy.

Q. Did you find it unreasonable for Paulette Anderson to refuse to go to Madison in view of the fact she had worked at Woodmere just recently, that the other part timers had not transferred recently, at least for any extended period of time, and in view of the fact that of the incident that occurred with her cousin and the fact that the neighborhood she has to go through on the train? A. I found Paulette's reasoning for not going either to Madison or to Lefrak --

Q. I'm talking about Madison. A. But I gave her a choice.

Q. You may say you gave her a choice but I'm asking just
832 about Madison? A. Did I find it unreasonable?

Q. Yes. A. Yes, I did find it unreasonable.

Q. So much so that what appears to be a valuable employee you felt you had to discharge? A. Well, let me put it to you this way, she had absolutely refused to go anywhere.

She was very adamant about it and she just made her statement saying she will only go to Little Neck.

At that point Madison Avenue was in a tremendous amount of trouble.

We had four girls that were out and I needed someone there.

Since Little Neck was a well staff gym I was able to choose from Little Neck a girl to possibly help us out for a very brief time.

Q. Debra Caron had refused to go, is that correct, to Madison? A. Yes.

Q. Rolinda Antone had refused to go? A. Right.

Q. Neither was experienced in terms of length of time with the Company; is that right? A. Right.

833 Q. You gave them no ultimatum? A. But Rolinda went to Lefrak.

Q. You gave them no ultimatum? A. No, I didn't give them any ultimatum.

Q. You have a location, don't you, 12 blocks away from Madison and 55th Street Location? A. Right.

MR. MONAT: Your Honor, may we have the answer just before this last question read back?

(Whereupon, the pertinent portion of the record was read by the Reporter.)

Q. (By Mr. Blyer) In addition to the location 12 blocks away from Madison Avenue you have one in downtown Manhattan, City Hall? A. Correct.

Q. And you have another one on 86th Street also on the east side; isn't that correct? A. Right.

Q. You have one at Fort Lee, New Jersey, just on the other side of the George Washington Bridge? A. Right.

MR. BLYER: I am just about done, Your Honor. Maybe one or two more questions.

Q. Do you recall when Rolinda Antone returned from Lefrak? A. She went there -- let me think for a second.

834 Friday the 15th. I believe she went there that next week.

The following week she was back at Little Neck and I think it was Monday the 25th she returned.

Q. Is it your testimony that the second time you spoke with Paulette Anderson was March 22nd? A. Correct

Q. That you offered her the opportunity to go to Lefrak? A. Yes, certainly.

Q. You said that you only thought Rolinda or you only needed Rolinda there for a week? A. Yes, but the situation at Madison still persisted and I felt that if someone could go to Lefrak City for an additional week, then perhaps by that time we would be able to solve our problem at Madison Avenue.

Q. What do you mean still persisted?

I thought you said you sent Mrs. Camp over there? A. Yes, but as I explained in my testimony before, what had happened was that Maria Camp, because of a problem with her car, would not go to Manhattan, to Madison Avenue, so she went into Lefrak City.

At that point we were unable to reach Rolinda because she had already left and both Rolinda and Maria Camp worked at Lefrak City.

835 Q. Before March of '74 where was Mrs. Campo working?

A. Lefrak City.

Q. Is it your testimony that you were hoping that by transferring someone from Douglaston, if they could go to Madison at least you could transfer them to Lefrak so you could send Mrs. Campo over? A. Right.

Q. Mrs. Campo you say one day, the first day that Rolinda went over to Lefrak, didn't go to Manhattan? A. Correct.

Q. Because of a car problem? A. Right.

Q. Did she ever go to Manhattan? A. No, she didn't because Rolinda called in sick.

Q. Yes? A. In other words, Rolinda was there Monday and Maria Campo was there Monday.

Wednesday Rolinda called in sick and she was unable to attend Lefrak City gym so Maria Campo had to remain at Lefrak City.

Q. So she never went there? A. No.

Q. So you still had that problem in Manhattan?

A. Right.

836 Q. Did you ever give Mrs. Campo an ultimatum to go to Manhattan or she is going to lose her job? A. No.

Maria Campo has gone to almost all our spas at any point.

Q. The reason she couldn't go to this one was because of some kind of car problem? A. Right.

Q. And Paulette Anderson had also recently gone to a spa, right, Woodmere? A. Right.

Q. But you gave her an ultimatum when she couldn't go to Madison or Lefrak? A. I didn't give Paulette an ultimatum.

I told her after several conversations if she would not help me out and transfer I would have to terminate her.

I didn't say anything else but that.

Q. You say though that when Rolinda came back now which was now how many days?

How many days did she work at Lefrak? A. She was due to work there two days.

That was her week.

Q. She called in sick on Wednesday so she worked Friday? A. No, she worked Monday.

837 Q. Monday and then she came back? A. The following week.

Q. How many days did she work there?

How many actual days? A. She actually worked only one day at Lefrak. She was scheduled to work two which consisted of her full week.

Q. You said when she back you called her back, right, that was all you wanted her to work, one week? A. Well, I was hoping that she was able to help us out during that week.

Q. Although she meant well she really didn't help you out because Mrs. Campo didn't go to Manhattan? A. Unfortunately, and then she got sick, so --

Q. So you didn't ask Rolinda Antone to go back then, back to Lefrak the next week so you could transfer Mrs. Campo out? A. No, I did speak to many of the girls.

Q. Not Rolinda? A. Yes, I spoke to Rolinda and I asked her if she would be able to do the same situation as she had the prior week and she said she was having a big problem with her babysitter and she just couldn't, and that was the end of the conversation with Rolinda.

838 Q. Now, it is just as easy for her to go from -- Rolinda at least to go to Douglaston as it is to go to Lefrak? A. I don't know.

I would think it would be the same.

I really don't know.

Q. You didn't tell her she would be terminated if she couldn't find a babysitter, did you? A. No, I didn't.

Q. Mrs. Campo ever go to Madison? A. Yes, she did.

Q. When was that? A. She had been there many times.

Q. No, no, after. A. After that, no, she didn't.

Q. What happened there? Why couldn't you send her? A. You mean that week?

Q. Well, to alleviate this massive problem you had in Madison? A. Because Rolinda was out sick.

Q. Not Rolinda, Mrs. Camp, why didn't you send her? A. I was trying to explain that.

That we had Rolinda who was sick so Maria Campo had to remain at Lefrak City.

839 Q. And you couldn't get anyone else? A. No.

Q. So when Paulette Anderson couldn't go that was it for her? A. That was it for her?

Q. Didn't you tell her that? A. No, I didn't say that to her.

I didn't say it that way.

I explained to Paulette Anderson the need at Madison.

I asked her if she would help us out and I tried to explain to her how important it was and she absolutely refused, and I said to her, "Paulette, if you can't help us out I will have to terminate you."

Q. It was your testimony that Paulette Anderson also had been cooperative in the past; isn't that correct? A. Yes.

Q. Do you recall Ellen Brezenoff informing you that she would be going or not be able to work for the Company because of the tonsillitis problem? A. Yes.

Q. Do you recall her telling you that and you agreed she would leave the Company's employ to go to the hospital around December 30th and December 31st? A. Correct.

Q. She would be out for about a month and then --

840 A. A little more than that.

Q. She was hoping to come back? A. That would depend upon how she felt.

Q. That was what she said? A. Yes.

Q. And isn't it so when you did learn of that, when this was made known to you that she would be going to the hospital December 30th or 31st? A. Ellen had -- I'm just trying to think now.

Q. How much before, day before, a week before, two weeks before? A. No, quite sometime before, as I said.

Q. How much is quite sometime? More than a month? A. I would say at least a month.

Q. When she informed you of this you were then without anyone other than yourself as the floor manager or someone to take your place when you were gone? A. Right.

Q. Isn't that when you decided to train Dee and Joan Holand with regard to eventually offering one of them the job of floor manager? A. When you say isn't that, what time are you referring to?

Q. When you were informed that Ellen Brezenoff on December 30th or 31st would not longer be employed by the Company for at
841 least a month? A. Well, at that point around New Year's time I thought if Dee and Joan would work out I would consider them, consider training them for the position of floor manager and assistant floor manager.

Q. Didn't in fact before Christmas and early January they acted in your place when you were not there? A. No, not necessarily.

Q. Well, who -- A. I was there all the time.

Q. You weren't there all the time. A. The only time I wasn't there was possibly on a Sunday, but otherwise, Monday, Wednesday and Friday and I was there.

Q. I think we already established that you may have been there around 75 percent of the time and 25 percent of the time you were not there.

MR. MONAT: Objection, Your Honor.

I am not sure that Counsel's statement reflects the facts in evidence.

JUDGE MALLER: As I recall it she was there I think 85 percent of the time.

15 percent of the time she was not there.

THE WITNESS: I was in the presence of the spa. I was not out of the building. I was there on the premises.

842 Q. But you weren't acting as the floor manager from time to time even when you were in the building? A. On occasion.

Q. Who would take over when you were not there?

A. Either Ellen, if I felt that she could, if her voice was capable.

She was able to do that much, or Joan or Dee, but it was just a very brief period.

They were the only three full time girls there.

Q. It was your testimony then on the 25th when you announced to your instructresses, most of them being part timers, that you were training Dee and Joan to be possibly the floor manager and assistant floor manager; isn't that correct? A. No, that is not correct.

Q. January, '74? A. There were no part time employees present at that time.

Only full time employees were present, and that was a Friday night and on that night I explained -- there was a meeting and I explained several things at the meeting.

One of the things that we did discuss was the training of Joan

843 and Dee as possible floor manager and assistant floor manager.

Q. You didn't say in fact that they would be given the positions?

A. No, they had not been given the positions.

Q. They were just beginning training? A. Right.

Q. And after 12 days of training which would probably be around what, four or five work days, you had then reached the conclusion that they were sufficiently qualified to become manager and assistant manager? A. Yes.

Well, they had been in the gym since the 30th of November working as instructresses.

Q. Instructresses but it is your testimony that they weren't as trainees? A. No, they were not going any kind of managerial work.

* * * * *

850

16 Court Street,
Brooklyn, New York,
Wednesday, August 14, 1974.

* * * * *

852

A. No, I do not recall anything like that at all.

Q. When Rolinda Antone ceased working on Friday nights that was at her own choice, wasn't it? A. Correct.

Q. Who imparted that information to you that she wished to cease working on Friday nights? A. She said that she spoke to me first.

Q. Did she tell you directly or did it come through Joan Holland? A. I believe she told me directly because she was the one who originally had asked me to work more hours and then when she couldn't she spoke to me.

I don't recall if it was through Joan Holland but she did speak with me herself.

Q. So she spoke to you herself about no longer working on Friday? A. Yes.

Q. But it also may have been that she spoke to Joan Holland

853

and that Joan Holland told you too. A. It is possible but she spoke to me directly herself.

Q. Did you or Ms. Holland ask her to sign a piece of paper to the effect that she no longer wished to work on Friday and that it was something that was her own choice rather than the company's desire? A. Yes, we did. That is our standard policy.

* * * * *

854 Q. Was it as you can best recall that you told Ms. Anderson that she no longer could work on Thursdays? A. It was the beginning of January. I believe it was Monday the 7th.

Q. That was the same week that she ceased working Thursdays? A. Correct.

Q. Do you recall in that week which would be the 11th of January when Rolinda Antone worked that Friday night? A. Offhand I don't recall. I would say probably she did work because Paulette was unable to Rolinda had told me she couldn't work for another few weeks.

Q. For another few weeks? A. Yes, until we were able to get someone.

Q. Filling for her on Friday nights; is that it? A. Yes.

Q. It is your contention that you offered Miss Anderson on the Monday, the 7th the opportunity to work Rolinda Antone's hours? A. That's right.

Q. Did in fact Rolinda Antone work for you the following few Fridays? A. Yes, she did.

Q. So it is your understanding she worked past the 11th
855 which was a Friday? A. Yes, and the reason was that she would say --

Q. I didn't ask you for the reason.

I show you the payroll records, Respondent's Exhibit 9 for the week ending the 18th. Does Miss Antone show there to have worked that Friday? A. No, she was off that Friday.

Q. And the following Friday, the 25th? A. No, at this point she was no longer working for us on Friday night.

Q. I thought it was your testimony that she told you that she was going to work for a few Fridays and then until you could find someone to replace her? A. That is correct.

Q. How many Fridays did she work? A. I would say she worked an additional two or possibly three Fridays after she spoke to me.

Q. When are you claiming that she told you this?
A. She told me this the beginning of January.

Q. The beginning of January? A. Right.

Q. Can you give me the date? A. Offhand I don't recall the date but it was in the very beginning of January.

Q. It is your contention she did work on Friday the 11th;
856 is that right? A. I believe so, yes.

Q. Did she tell you about Friday the 4th, that she was no longer to work? A. She may have told me during that week.

Q. During the week of Friday the 4th? A. That's right, she thought she would be able to but she was not.

Q. You say that it is standard policy when a person which is no longer to work certain hours and ask that she be taken off those hours, that you have them sign a document? A. In their own handwriting saying their request.

Q. You do that immediately upon their request? A. Not necessarily. Sometimes a girl as Rolinda would work a few weeks longer until she couldn't work any longer and then she would fill it out.

Q. What happened with Rolinda, do you know? Do you remember when she signed that? A. I don't remember the date but I do recall that as I explained to you she told me the beginning of January.

At that point when we were going to be putting in Jackie Balabaos and Jeanne Murphy I spoke to Paulette and since Rolinda was unable to work Friday night I offered the hours to Paulette.

857 Since Paulette was unable to work that Friday night Rolinda

said she would continue working for us for another few weeks as long as her babysitting problem would not affect it and that is exactly what she did.

Q. Well, I don't think that was responsive to my question.

The question was do you recall when she signed the paper?

A. It must have been around the 20th of January, something like that. I don't recall but I do recall that she probably signed after she first spoke to me.

Q. That is about three weeks after? A. About two weeks, I believe.

Q. You are putting the date that she signed it in early January, right? Excuse me, the date she told you she would no longer be working?

A. I would say in the middle of January.

Q. No, let us get back. When she first requested she be taken off these Fridays, when did that occur? A. When she first spoke to me?

Q. Yes. A. That was the beginning of January.

JUDGE MALLER: When do you say she signed this paper?

THE WITNESS: The middle of January.

JUDGE MALLER: How long did she work?

THE WITNESS: She probably worked until around the 20th

858 of January, the 18th of January, something like that.

Q. But the last Friday was January 11th? She didn't work January 18th? I just showed you those records. A. Well, if she didn't, I don't recall the date but I do remember she worked at least two weeks after the date she spoke to me.

Q. Was it you that handed her the paper to sign? A. Yes, she signed it in front of me, I believe.

Q. You asked her to, not Joan Holland? A. No, I asked her to.

MR. BLYER: Do you have it?

MR. MONAT: Yes.

May the record indicate I furnished counsel with a copy of a piece of paper I believe he requested concerning Rolinda Antone.

JUDGE MALLER: The record may so show.

MR. MONAT: I ask that it be shown to the witness.

MR. BLYER: Glad to. Just about to.

May I have this marked as General Counsel Exhibit 4.

(Document marked General Counsel's Exhibit 4 for identification, of this date.)

Q. Can you identify this document which has been marked for identification as General Counsel Exhibit No. 4. A. Yes, this is the letter that Rolinda had wrote.

859 Q. And the date on that? A. January 23rd.

Q. Whose signature do you find at the bottom? A. Joan Holland.

Q. And who else? A. Rolinda.

Q. Whose handwriting is the signature Joan Holland in? A. Joan Holland's handwriting.

Q. What is the designation after her name? A. Floor manager.

So do you now recall whether Rolinda Antone signed this in front of you or Joan Holland? A. No, she did sign it in front of me and Joan Holland was there at the time.

Q. And she co-signed it? A. Joan Holland? Joan Holland signed it. Rolinda and Joan signed it.

Q. Joan Holland signed it, "Joan Holland, Floor Manager?" A. Right.

Q. January 23rd, right? A. Yes.

MR. BLYER: I offer this, Your Honor, as General Counsel Exhibit No. 4.

JUDGE MALLER: Any objection?

MR. MONAT: No, Your Honor.

JUDGE MALLER: General Counsel Exhibit 4 is received in
860 evidence.

(General Counsel's Exhibit 4 for identification received in evidence, of this date.)

Q. Will you tell us Paulette Anderson's response to you when you offered her these hours on Friday night? You claim you offered her Rolinda Antone's hours, right? A. Yes, she said that she was unable to work on Friday night. She didn't want the hours, but if we had a problem and we couldn't get anyone to fill the hours that she would help us out on occasion.

She did not want Friday nights on her regular schedule.

Q. Did she say why? A. No, she didn't go into any detail.

Q. You didn't ask? A. No.

Q. Did you ever find a permanent replacement for Mrs. Antone for those Friday evenings? A. No, we did not.

Q. Did you ever ask Ms. Anderson to work on those Friday evening? A. I had asked her at one point and she said no, she was unable to and then we just dropped the whole thing.

Q. You mean you asked her again some subsequent date?
A. On a particular Friday night, yes.

861 Q. Did she give you a reason why? A. No, she just said she was unable to.

Q. And you didn't ask her why? A. No; I didn't.

Q. With regard to this episode at Woodmere do you remember what date Paulette Anderson worked for you at Woodmere? A. Yes, I believe it was Monday, February 4th.

Q. On that day do you remember Janice Rigney, an instructress at Woodmere, going home early? A. I believe she did go home early that day, yes.

Q. On that day, Monday, the 4th of February, who else was employed on that date at Woodmere? A. The 4th of February? In the evening? I don't recall.

Q. Paulette Anderson? A. Paulette was there, yes.

Q. Was anyone else there? A. I would imagine so. I don't recall if anyone else was there or not.

Q. Do you recall a girl being sent in from Lefrak to help out that Monday? A. It is possible.

Q. Do you recall there being any employees at Woodmere who were employed there on a regular basis working on that Monday, February 4th?

MR. MONAT: I object, Your Honor.

862 JUDGE MALLER: What is the relevance of all this, Counsel? I fail to see what you are getting at.

MR. BLYER: Your Honor, I intend to show the real desperation that the company was in with regard to employing someone at Woodmere.

What I hope to show is that Paulette Anderson was doing the company quite a favor and was really pulling them out of a jam by working at Woodmere and that it is our contention that it is all the more reason that it was illogical and unreasonable for her to be discharged a few weeks later.

MR. MONAT: Your Honor, I object. It seems to me that we covered this Woodmere situation and there is no question but that we needed her at Woodmere. That is why we asked her to go.

I don't see why if you want to call it a favor or great favor or great help, whatever, the fact shows it is, but I think it has been gone into.

JUDGE MALLER: In addition you have now counsel's admission as to her need at Woodmere so I don't think you have to go into it any further.

* * * * *

863 MR. MONAT: When you say admission, that smacks -- I asserted. I assert it because I want to assert it, not in terms of an admission against interest.

JUDGE MALLER: Well now, you can't blow hot and cold.

MR. MONAT: Yes, it is a fact that we needed her there but I don't know why we call it an admission.

JUDGE MALLER: You are admitting the fact that they needed her.

MR. MONAT: Certainly, of course.

JUDGE MALLER: Right, and since you have admitted that on the record I see no necessity for General Counsel going into the matter any further. It is as simple as that.

* * * * *

864 REDIRECT EXAMINATION

Q. (By Mr. Monat) Mrs. Katz, do you know what dates the paychecks normally were given out during the week at Little Neck back in December? A. Yes, on Wednesday.

Q. While you were acting in your dual capacity as a floor manager and also assistant service supervisor, did you have anybody else, any employees on the floor you could turn to if you were busy on some other matters? A. Yes, I did.

Q. Who is that? A. Gabriele Schwartz.

Q. Was her office at the time at Little Neck? A. Yes, it was.

Q. Where do you live? A. I live in Whitestone.

Q. How far in terms of traveling time is that to get to Little Neck? A. Ten minutes.

Q. Were there some occasion where you didn't work Sundays in this period in December and January? A. Yes, there were some occasions.

865 Q. Did you ever receive any phone calls on Sundays? A. On occasion, yes, I did.

Q. In reference to what kind of matters? A. Just general. I really don't recall what the matters were, but --

Q. I mean pertaining to the Little Neck gym. A. Yes, pertaining to how the floor was running.

The girls would just check with me on a couple of situations, something that they wanted to be sure was done correctly, handling a member of teaching an extra class if they had to. Just everyday occurrences.

Q. Do you recall any occasions where you were not scheduled to work but you came in for any period of time on Sunday? A. Yes, there were many Sundays that I would come in at 1 and stay from 1 to 2, or there were Sundays that I would come in at 2 and stay from 2 to 5.

Q. There was some reference in your testimony yesterday to Ellen Brezenoff being in charge. Did she have any authority to take any action with respect to employees in terms of disciplining them? A. No, none whatsoever.

Q. If she was I think there was some testimony about her running the floor or something like that; what would she do if she had a problem?

866 A. She would come directly to me.

Q. Was there anytime where you gave Debbie Caron a warning about cleaning duties? A. No, there was not.

Q. I believe there was testimony yesterday where you agreed that Paulette Anderson was a good employee.

Were there ever any problems that you were aware of with Paulette Anderson? A. Well, I had been made aware of two particular problems that had occurred, yes.

Q. Just briefly, what were those?

MR. BLYER: Your Honor, I will object to the relevancy of any problems. I don't know of any contention here that because of any problems that Ms. Anderson may have had at work that they took any action against her or that it was the reason for any action.

MR. MONAT: Your Honor, I think this is proper redirect to just explain matters. I'm not asserting that what I'm bring out here has anything to do with necessarily the ultimate discharge, but I think it goes to the background of this employee and I have other witnesses yet to testify.

JUDGE MALLER: Does it? Was that the reason for her discharge?

MR. MONAT: No, that had nothing to do with it.

* * * * *

867 Q. Was there anything that you personally observed in the period of time when you were floor manager in your dual capacity that would indicate anything about what things were like at that time in terms of Paulette Anderson's conduct and so on? A. Yes, I did.

Q. Would you just briefly tell us? A. Yes, whenever Paulette was on the gym floor she was not concentrating on servicing
868 the members as much as she used to.

She was greatly talking with the other instructresses, particularly Debra Caron and her head was not really into it.

I attributed most of it at the time to just immaturity on her part and I didn't really do anything about it.

JUDGE MALLER: When was this, please?

THE WITNESS: This was during the time when they were having the -- prior to the union election.

Q. Did this have anything to do with the ultimate circumstances surrounding the termination of Ms. Anderson's employment? A. No, it did not.

Q. Were you at anytime given any instructions by anyone else in management about talking to employees in reference to the union? A. Yes, I was.

Q. Who gave you those instructions? A. Mr. Harry Schwartz and Gabriele Schwartz.

Q. Approximately when, do you recall? A. Yes, sometime I would say October, August, July, something like that.

Q. What were the instructions? A. Specifically not to
869 get involved with speaking to any employees about any union activities.

Q. There was some talk yesterday, questioning I should say why didn't you check to see what was going on after Debbie Caron and Paulette Anderson claimed they were being harassed.

Can you give an explanation for that? A. Yes, I can. It was quite unnecessary for me to check because I was present most of the time and I was constantly aware of what was happening.

I was the one that was distributing the classes and the cleaning duties. That is why I couldn't understand what they were referring to.

* * * * *

Q. Do you recall who worked on Thursdays after Jackie Balabaos? A. Yes, Jeanne Murphy.

Q. After Jeanne Murphy. A. Chris Conick worked there and now we have Donna Barrard working there.

Q. Was Jeanne Murphy a full timer? A. Yes, she was.

Q. Chris Conick? A. Yes.

870 Q. And Donna Barrard? A. Yes.

Q. What is it about a full time employee that you prefer to have a full timer on Thursday or Tuesday? A. Well, we have found in the past that a full time girl is much more career oriented. She is there for many hours during the week. She is tuned in to sales.

She is able to handle referrals at the reception desk. She is able to write out a receipt, and a full timer could never -- a part timer, excuse me, could never get into anything like that.

Many of our fill time floor staff have gone directly into sales, so this is a good opportunity for them and we found that it has worked out very well.

Q. On the Thursdays and Tuesdays what do they do in terms of sales? Where does that come into their work? A. Well, very often a manager or a program director will be interviewing someone and they might need some assistance from the instructress in terms of speak to them about programs.

Sometimes a person will come up to the reception desk and want to renew her membership and the instructress has to fill

out a slip, a receipt and take money from her, either check or charge or cash.

Very often the full time girl will act as receptionist for an hour
871 or even more and has to answer the phones and has to properly know who is who in the company, has to make appointments for people to come in and she is totally much more involved than a part time girl could ever be.

Q. You mentioned referrals. What would that be?
A. I'm sorry, renewals, I meant renewals.

Q. What is that? A. When a member is going to be renewing her membership she will renew it and the girl at the reception desk, the receptionist or the full time instructresses will take her card, staple it together, give her a receipt, take the money from her and process the renewal.

Q. Do you know if the part timers, including Paulette Anderson, did renewals? A. No, they did not.

871 Q. Do you know if there was any change in Rolinda Antone's hours at any point? A. Yes, there was.

Q. Do you recall when that was? A. Yes, it was the very end of February.

Q. What was the change? A. Rolinda's hours were cut from 10 o'clock in the evening 'til 9 o'clock in the evening.

Q. On both days or one day? A. Friday -- I'm sorry, Monday and Wednesday.

872 Q. Do you know Randy Fishkin? A. Yes, I do.

Q. Where was she working, do you know, recently? A. In the last six months she has worked at Little Neck and Lefrak.

Q. Where is she now, do you know? A. She is at Lefrak City now.

Q. At the Madison Avenue location there was some testimony yesterday about how at a suburban gym like Little Neck you have mornings a busy period, from I think you said 10 to 2. Do you have any such comparable period of time in the day at the Madison gym? A. No, not during the day.

Q. Is there any distinctly busy time at Madison? A. Yes, we get excessively busy in the evenings between five o'clock and eight o'clock.

Q. Do you recall whether in any of your conversations with Paulette Anderson in reference to the Madison matter whether she mentioned anything or, excuse me, whether there was any mention of the Labor Board? A. Yes, I believe it was the Friday night, the 22nd of March that I had spoken to Paulette, once again asking her to please help us out and Paulette said to me, "If you transfer me I will go to the Labor Board."

Q. Do you know an employee named June Coller? A. Yes,
873 I do.

Q. Do you know where she works? A. Now? Do you mean right now?

Q. Yes. A. She is not with us right now.

Q. Was there any time when she worked at Madison, do you know? A. Yes.

Q. When did she start to work there, do you know? A. I believe it was the first week in April. She had worked at another club prior to that week.

Q. What was she? A. She was a part time instructress.

MR. MONAT: May I have just a moment, your Honor.

JUDGE MALLER: Yes.

Q. Mrs. Katz, referring to General Counsel's Exhibit No. 4, the text of this piece of paper, who wrote that out, the main text? A. Rolinda Antone.

Q. As of January 23rd was Joan Holland the floor manager? A. No, she was in the process of being trained. As a matter of fact, that following day, Friday, was when I had made the announcement to the staff that they would be in training.

874 Q. Do you recall when that was Joan Holland signed this piece of paper? A. I don't recall. Must have been -- could have been that Friday night.

Q. But was it the same time Rolinda signed it? A. I don't know.

MR. MONAT: No further questions.

JUDGE MALLER: Mrs. Katz, let me ask you, from the viewpoint of an instructress, which phase of the work is more desirable?

THE WITNESS: I don't quite follow you. When you refer to which phase, there are many phases of the job.

JUDGE MALLER: There are many phases. There is instructing in calesthenics classes, there is supervision in the gym, there is cleaning up. Are there any other phases?

THE WITNESS: Perhaps members taking guests programs, giving tours, calling inactives. Many things.

JUDGE MALLER: Which phase of the work?

THE WITNESS: Is not desirable to an instructress?

JUDGE MALLER: Yes.

THE WITNESS: I would say personally working with the members because you do develop a rapport with them, and teaching classes.

JUDGE MALLER: Teaching classes would be calisthenics?

875 THE WITNESS: Yes, calisthenics classes are the most desirable.

JUDGE MALLER: As between supervising in the gym and calisthenics classes which is the most desirable?

MR. MONAT: Your Honor, just so I might clarify, when you talk about supervising are you referring to the function of walking around?

JUDGE MALLER: Walking around, watching the members doing their workouts on the apparatus.

THE WITNESS: It is not just a question, if I may explain.

JUDGE MALLER: Go ahead.

THE WITNESS: The question of just watching the members doing their work on equipment. Instructresses will work with them, physically teach them and reeducate them how to use their bodies and how to feel certain exercises working for them so that can be very, very satisfactory to someone.

A lot of girls prefer teaching calisthenics classes but many don't because they have a larger group and cannot perform as well in a larger group as they can with maybe 10 or 8 people. So I would say it would be a tossup really.

JUDGE MALLER: Which work is the more arduous to an instructress?

THE WITNESS: Well, again I have to explain. May I?

876 JUDGE MALLER: Go ahead, please.

THE WITNESS: When you teach a calisthenics class, if it is taught properly you do not work out in the calisthenics class. You will demonstrate one or two exercises or perhaps have a member demonstrate for you.

You then verbally teach the exercise and then go through the class correcting the members.

When you are on the gym floor working, supervising the members, again you are not physically jumping and doing the exercises. You are verbally teaching them or physically moving their bodies, so which one would be more arduous, you know, in terms of physical activity, again it would be a tossup.

JUDGE MALLER: Would an instructress consider running say two calisthenics classes in a row to be arduous?

THE WITNESS: Probably because her voice would get very tired. She would be speaking all the time.

JUDGE MALLER: I have nothing further.

Is there anything further of this witness?

MR. BLYER: Yes, your Honor.

JUDGE MALLER: Please confine your examination on what was brought up on redirect or anything I have raised.

MR. BLYER: I will, your Honor.

RECROSS EXAMINATION

Q. (By Mr. Blyer) Isn't it a fact that you were standing with
877 Joan Holland when she signed what we have identified or what has been introduced into evidence as General Counsel Exhibit 4, the note dated January 23, 1974? A. I was with Rolinda. Joan Holland was present. Rolinda filled out the form in her own words and wrote her signature. Whether Joan Holland actually signed it at that point I couldn't tell you. Joan was there, I was there and Rolinda was there.

Q. Wouldn't you say it was likely that she signed it that time? A. It was possible but this was part of her new function to be her training -- if she did the training well as floor manager.

Q. Are you suggesting to us that although this is a standard procedure it wasn't standard for the supervisor at that time to sign it when Rolinda Antone signed, they just signed it whenever they wanted to? A. I'm sorry.

Q. You said there was a standard procedure. A. For --

Q. When a person wanted to reduce her hours at her own choice would you ask her to put something in writing? A. Right.

878 Q. And then have her sign it? A. Correct.

Q. And then have a manager consign it? A. Right.

Q. Joan Holland signed it? A. Yes.

Q. Are you suggesting to us that it wasn't standard for her to sign it at the same time Rolinda signed it? Wasn't that the standard procedure? A. I'm not suggesting that it was or it wasn't. I don't recall if Joan signed it at the point or the following day.

Q. I'm not asking you that. I'm asking wasn't it the standard procedure to have at the same time Rolinda Antone sign it, to have the floor manager sign it? A. Usually except that it was important to have the girl who made the request sign the paper first.

Q. Let us try again. Wasn't it the standard procedure for the manager to sign it at the same time that the person who made the request sign it? A. Usually.

Q. Would you say it would be a bit cumbersome and rather a shoddy way to run a business if at some future date you relied on this floor manager to go and locate this piece of paper to remember that in fact she had to sign it and then to sign it?

879 MR. MONAT: Objection.

A. There was no --

JUDGE MALLER: Overruled.

A. (Continuing) There was nothing to locate. The paper was in the floor manager's book. I had knowledge of where the paper was and once I made the official announcement that Joan Holland would go into training and Dee Annott would go into training which was the following Friday, the 25th, Joan may have then signed it.

Q. So even though you allege to have made an announcement on the 25th they were going into training two days earlier in your presence it is likely that Joan Holland signed it stating floor manager? A. It is likely, yes.

* * * * *

881 Q. You testified that this business about putting full timers on Thursdays worked out very well? A. Right.

Q. How long did Jacqueline Balabaos stay on that job on Thursday? A. I believe it was two weeks.

Q. How long did Jeanne Murphy stay? A. Until she left us.

Q. Which was when? A. I don't recall the date that she left. It was sometime in March, I believe.

Q. And she started January 2nd? A. Yes.

Q. She started doing this job on Thursday? A. Immediately after Jackie could not do it.

Q. Which would be around what, mid-February? A. No, I think it was the middle of January, the end of January.

Q. Jackie was on it for three weeks? A. Two weeks.

882 JUDGE MALLER: Who?

Q. Jacqueline Balabaos two weeks? A. Two weeks.

Q. When did she start, Jackie Balabaos? A. The first full week of her employment.

Q. She started doing that? A. Correct.

Q. That would put it in the middle of January? A. Right.

Q. Then you replaced her with Jeanne? A. Right.

Q. You say she stayed on that job until she left? A. Correct.

Q. Which was before Paulette Anderson, wasn't it?

A. Before Paulette Anderson?

Q. Didn't she leave before Paulette Anderson? A. Oh, yes, I'm sorry.

Q. So the most it could have been was two months?

A. That Jeanne Murphy was taking that position?

Q. Yes. A. I would say approximately two months.

Q. The third person you said, another full timer whose last name was Conick, Chris Conick? A. Yes.

883 Q. She is no longer employed with you? A. Correct.

Q. And the fourth individual who has had it since is Donna Barrard? A. Yes.

Q. She is still with you? A. Yes.

Q. She is still doing that? A. Yes, she is.

Q. Was there in fact anything that these people did on Thursday that Paulette Anderson had not done or could not easily have learned to do?

MR. MONAT: Objection.

JUDGE MALLER: What is the basis of the objection?

MR. MONAT: Whether she could have easily learned to do it or not, that is not relevant.

JUDGE MALLER: I will let her answer.

A. Could you repeat it, please?

Q. You went through a series of things that these full timers did. A. Yes.

Q. Suggesting that part timers did not do it or could not do it. A. Right.

Q. Does it really involve a lot to renew a membership?

A. Well, it involves knowing how to do it.

884 Q. Does it take much to teach someone to do that?

MR. MONAT: Objection, Your Honor.

JUDGE MALLER: Well, now, what is the relevance of the duties of a part timer vis-a-vis that of a full timer in the context of this case?

MR. BLYER: Your Honor, there is evidence which is suggesting, more than suggesting, it was offered to show that they put

full timers on the Thursday schedule replacing Paulette Anderson because full timers were more qualified to do certain aspects of work that were being performed on Thursday.

We are suggesting that that is not the case, that anything that was done on Thursday by a full timer had been done or could have easily been done by any part timer.

MR. MONAT: Your Honor, Mr. Blyer is suggesting that --

MR. BLYER: I told him what I was suggesting.

MR. MONAT: What he should have done by his question is teach or authorize Paulette Anderson to do things that full timers do. I don't think that is relevant. To suggest we should have let, you know, her do especially what other part timers don't do.

JUDGE MALLER: That is a business decision that I'm not interested in. Sustained.

* * * * *

887 Q. * * * Is it also your testimony that Ms. Brezenoff never acted as a trainee? A. Correct.

* * * * *

889 MR. MONAT: Your Honor, I object.

May I see this? I think early in the proceeding, going back to July when we started this case I objected to any amendment of the complaint, et cetera that alleged that Ellen Brezenoff was a supervisor.

I understand that General Counsel, and I believe it is in the record, did not contend she is a supervisor, that in fact you let certain testimony in, I believe, because she was merely alleged

890 to be a conduit and that was the only basis on which any evidence was being taken in this case as to Brezenoff.

I think now we have in a sense gotten into the whole question of supervisory status of Brezenoff. I don't think we should go beyond the question of conduit and agency.

I object to even that but at least I think that was a prior ruling in this case.

MR. BLYER: Your Honor, we have no intention of establishing Ellen Brezenoff as a supervisor. We insist she was an employee.

This questioning is solely for the basis or credibility. She has testified that she never acted as a trainee, Miss Brezenoff. Miss Brezenoff's testimony is to the contrary and I'm trying to establish that Mrs. Katz' testimony is incorrect, that in fact she was a trainee.

Just for credibility, no other purpose.

MR. MONAT: Your Honor, I submit that counsel and I agree basically on her employee status and I think it is a rather peripheral matter and just leads us into the whole question of supervisory status.

JUDGE MALLER: I will sustain the objection.

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891 FURTHER REDIRECT EXAMINATION

* * * * *

Q. (By Mr. Monat) Did you ever assign Paulette Anderson or Debbie in December or approximately in early January, referring to that time period, to consecutive calisthenics classes? A. No.

* * * * *

JOAN HOLLAND

having been sworn by Judge Maller, took the stand and testified as follows:

892 DIRECT EXAMINATION

Q. (By Mr. Monat) Would you state your name and address, please. A. Barbara Joan Holland, 2076 Walnut Street, Baldwin.

Q. Ms. Holland, how long have you been employed by Jack LaLanne? A. Eight or nine months.

Q. Where did you start your employment? A. In Little Neck.

Q. What was your position when you were initially hired? A. Instructress.

Q. Were you working at Little Neck in the month of December and January? A. Yes, I was.

Q. Did you perform any duties with respect to cleaning? A. Yes.

Q. What kind of cleaning duties did you perform as an instructress? A. The same as everybody else.

Q. What would that entail? A. Polishing mirrors, chrome, vacuuming, mopping, dusting, cleaning the bikes.

Q. What about calisthenics classes? A. Yes, I gave those.

Q. What about taking members around with program cards,
893 did you do that also? A. Yes, I did.

Q. Now, based on your observations and your having been employed at Little Neck back in December -- let me say this, have you been here throughout this hearing? A. Yes, I have.

Q. And have you heard all the testimony concerning cleaning duties and calisthenics classes, et cetera? A. Yes, I have.

Q. Based on your observations back in December and January did you ever see Debbie Caron and Paulette Anderson getting more cleaning work than anyone else? A. No.

Q. Did you ever see them getting consecutive calisthenics classes and excessive numbers of calisthenics classes? A. No.

JUDGE MALLER: The question is double barreled.

MR. MONAT: I will break it up.

Q. Did you ever see them get for a period of two weeks, get each time they were working consecutive calisthenics classes?

A. No.

Q. There has been some testimony they have had three and four calisthenics classes a night. Do you recall anything like that?

894 A. No.

Q. Were you giving calisthenics classes yourself in December and January? A. Yes, I was.

Q. Did you ever notice that Paulette Anderson or Debbie Caron had continuously during this period in December more program cards, more people to take around than anyone else?

A. No.

Q. Were you taking people around yourself at that time?

A. Yes, I was.

Q. Did Paulette Anderson or Debbie Caron ever tell you that they thought they were getting more than you and it was unfair or anything like that? A. They may have mentioned it in passing but not really anything that I can recall.

JUDGE MALLER: I can't hear you.

THE WITNESS: They may have mentioned it in passing but nothing that I, you know, would have thought second thoughts about.

JUDGE MALLER: Please keep your voice up.

Q. Do you recall an incident on the gym floor in January 1974, involving Debbie Caron? A. Yes, I do.

895 Q. Approximately when was this incident? A. The middle of January.

MR. MONAT: Your Honor, I believe yesterday I brought up certain profanity in the record. I don't wish to reiterate specifically that again. I am just going to ask this witness to testify to the conversation without being specific unless you think I ought to elicit specific --

JUDGE MALLER: You might as well. We are all adults and we have heard the words before.

Q. Will you tell us about that incident? A. Yes, I was in the gym and I noticed that Debbie Caron was sitting on the floor when she was working with members and it was totally unnecessary.

JUDGE MALLER: Please keep your voice up.

A. (Continuing) I asked her to please stand up and she gave me a dirty look and I explained to her that Anita had left the room for a few minutes and asked me to keep an eye on things.

I knew that part of the job was that we are not allowed to lounge around in the gym so I explained this to Debbie and she said something to me that sort of shocked me in front of members and I just left the room.

Q. What did she say to you? A. Well, when I told her Anita had asked me to do this she said, "Fuck Anita Katz."

896 Q. Do you recall a meeting with Anita Katz and some other employees sometime in January? A. Yes, I do.

Q. Do you know when the meeting was? A. It was the end of January on a Friday night.

Q. Who was there? A. Anita Katz was there, myself, Dee Arnott, Jeanne Murphy and Jackie Balabaos.

Q. Do you recall what was discussed at this meeting, what was said and who said it? A. Well, it was a usual meeting going over procedures and guest procedure and how to fill out cards and

just remembering procedures that we are doing in the gym, and Anita also mentioned at that meeting that Dee Arnott and I would be in training for positions of floor managers and assistant floor manager.

Q. Had you had any occasion before that to yourself alone that anything like that might be happening? A. There was mention, suggesting of that.

Q. I want to show you this exhibit which is General Counsel 4. Can you recall when you signed that? Is that your signature on that there? A. Yes, it is.

Q. Could you recall when you signed it? Do you have any
897 recollection? A. I'm not sure. I may have signed it when Rolinda signed it or I may have signed it a day or two afterwards.

Q. January 23rd, would that be before the meeting with Anita? A. I think it was before.

Q. Nonetheless it indicates that at the point you signed, if it was signed before then, that you signed as floor manager. Would you have any explanation why? A. Well, being that there was the suggestion that I might be in training for that position I guess I took it upon myself to use it.

Q. Was there a time when you started wearing any kind of a badge which would indicate you were floor manager? A. Yes.

Q. When was that, approximately, do you know?
A. The beginning of February.

Q. Did you get a raise for being a floor manager? A. Yes, I did.

Q. Do you know when you got that raise? A. Well, it came in my paycheck in February, I think around the 13th.

Q. Was there ever any time where you told Jackie Balabaos and Jeanne Murphy that the company was trying to get rid of Paulette Anderson and Debbie Caron? A. No.

898 Q. Did you ever tell Jackie Balabaos and Jeanne Murphy that they should keep away from Paulette Anderson and Debbie Caron? A. No, never.

Q. Were you working at the gym on Sunday, March 24? A. Yes, I was.

Q. Were you floor manager at that time? A. Yes, I was.

Q. Did you see Paulette Anderson that day? A. Yes, I did.

Q. When did you first see her, do you recall? A. At one o'clock.

Q. Was there any conversation with her at that point? A. Yes.

Q. What was said? A. Paulette came into the gym at one o'clock. I was already in the gym and she said to me she was not supposed to be there, she had been assigned a transfer temporarily to Madison Avenue and that was about all that was said.

Q. Did she work that day? A. Yes, she did.

Q. Do you recall speaking to Gabriele Schwartz on Monday March 25th? A. Yes, I do.

899 Q. About approximately what time? A. I would say lunch, around lunchtime.

Q. What was said in that conversation? A. She explained to me that Paulette Anderson would be temporarily transferred to Madison Avenue and I should not expect her in that evening and that if she did come in she should speak to John Wilton.

JUDGE MALLER: Speak to who?

THE WITNESS: John Wilton.

Q. John Wilton was the manager of the spa at that time?
A. Yes.

Q. Did you see Paulette Anderson that evening at all?
A. Yes, I did.

Q. What time was it, approximately? A. It was about 20 after 6.

Q. Did you say anything to her at that time? A. I think I told her John Wilton would like to speak to her.

Q. Did you tell her not to sign in? A. No, I don't recall telling her that.

Q. Did she have her uniform? A. No, she did not.

Q. Did you have any occasion thereafter to be at any conversation involving Paulette Anderson? A. Yes.

900 Q. How did that come about? A. John Wilton came out of his office and asked me to come in, that he was speaking to Paulette.

Q. Who was in the office? A. John Wilton, Paulette Anderson and another guy.

JUDGE MALLER: And who?

THE WITNESS: Another guy. I don't know his name.

Q. What time was this? A. Oh, I would say around 8 o'clock.

Q. What was said when you were there, what occurred?
A. Well, John Wilton told me he had again asked Paulette to transfer to Madison Avenue temporarily and she refused to do so and was therefore terminated.

Q. Was there any piece of paper there? A. Yes.

Q. I want to show you Respondent's Exhibit 7. Do you recognize that document? A. Yes, I do.

Q. Did anyone have that piece of paper at this meeting in Wilton's office? A. Yes, Paulette Anderson.

Q. Did you sign that piece of paper? A. Yes, I did.

Q. Do you recall making any comment about that piece of paper? A. Yes, I do.

901 Q. What did you say? A. I was asked to sign it and before I sign anything I always read it so I read it through and I realized that it wasn't worded properly so I refused to sign it.

John Wilton then made a change on the paper and after that I signed it.

Q. Do you know who prepared that piece of paper? A. Yes, Paulette Anderson.

MR. MONAT: No further questions.

JUDGE MALLER: You may cross-examine.

CROSS EXAMINATION

Q. (By Mr. Blyer) Ms. Holland, when did you begin working for the company? A. The end of November, 1973.

* * * * *

902 Q. And the person in charge of you at Jack LaLanne was Anita Katz; is that correct? A. Yes.

Q. At least until you became floor manager or at all times? A. Yes.

* * * * *

903 Q. Are you suggesting to us that when you signed your name Joan Holland, floor manager, on the 23rd of January or the latest on the 25th that you were not in fact a floor manager? A. Yes.

Q. Didn't you think that was pretty presumptious thing to do? A. Yes.

Q. And youdid it anyway? A. Yes.

Q. You thought that would help you get the job?

MR. MONAT: Objection.

JUDGE MALLER: I will sustain the objection.

Q. Anita Katz ever speak to you about signing your name in that manner? A. No, she did not.

Q. She was there when you signed it, wasn't she? A. I don't remember.

Q. She was there when you read through what Rolinda Antone wrote, didn't you? A. May have been.

Q. You are not sure? A. I am not positive no.

Q. What did you do with the piece of paper after Rolinda
904 signed it? A. I believe it was placed in the floor manager's notebook.

Q. Would that --

JUDGE MALLER: Just a minute, please, keep your voice up.

THE WITNESS: Okay.

Q. Who had access to that floor manager's book? A. Anita Katz.

Q. She never mentioned anything to you about signing that letter, "Joan Holland, floor manager?" A. No, she did not.

Q. With regard to Respondent's Exhibit 9 which is the weekly payroll sheets, are you familiar with them? A. Yes, I am.

Q. Who prepares these weekly payroll sheets? A. Generally the floor manager.

Q. Is this done on a daily basis? A. Yes.

Q. So at the end of each day the floor manager will fill in the number of hours worked by certain employees? A. Yes.

Q. Who filled in the payroll sheet for the week beginning January 19, 1974? A. Who filled it in? I recopied it.

905 Q. Who was it prepared by? A. This was prepared by myself.

Q. And all those thereafter, at least through the 22nd in '74, who prepared those? A. I did.

Q. It is your contention that time you were floor manager, the 19th? A. No, I was not.

Q. You were not? A. No.

Q. But you were filling these in? A. I was recopying them.

Q. Recopying them? A. Yes.

Q. You didn't originally prepare these? A. Well, those were the ones that were sent into the main office. Sometimes the scrap copy that was kept in the notebook was not neat.

Q. I am asking you, this one that says prepared by Joan Holland, week ending 1/25/74, isn't that your handwriting throughout? A. Yes, it is.

Q. Isn't this the original? A. It is the original that we keep and send into the office, yes.

906 Q. What was Dee Arnott's position at this time? A. Instructress.

Q. You claim that you were an instructress too at the time? A. Yes, I was.

Q. So it was you who filled in these sheets? A. Yes.

Q. Prior to that who filled in the sheets? A. I don't know. I would imagine Anita Katz.

Q. How about if I showed you the one for the week ending 1/18/74, who filled in that? A. I think that is Anita Katz' handwriting.

Q. Who does it say prepared by? A. Anita Katz.

Q. And the handwriting is not yours, is it? A. No, it is not.

Q. It is Anita Katz'? A. I think so.

Q. Who does it say approved by? A. Anita.

* * * * *

907 Q. Earlier this day haven't you testified that Mrs. Schwartz told you that Paulette would not be working that night?

MR. MONAT: Objection.

Q. (Continuing) Would not be working that night at Little Neck?

JUDGE MALLER: Just a minute.

MR. MONAT: I don't think that is a correct characterization.

JUDGE MALLER: Read the question, please.

(Whereupon, the last question was read by the reporter.)

JUDGE MALLER: Overruled.

A. Yes.

Q. So why were you looking for her uniform? A. Well, when I saw her there I presumed that she was expecting to come into work at Little Neck.

Q. Yes? So you were looking for her uniform? A. For her uniform, knowing that she was late if she was reporting to work.

Q. But you had been told she was not to work that night at Little Neck? A. I was told she was temporarily transferred to Madison Avenue and that should she come in she should speak to John Wilton.

* * * * *

910 Q. Do you remember in fact any meeting with Jackie Balabaos and Jeanne Murphy in January of 1974 where Dee Arnott was also present? A. Yes.

Q. What was that meeting about? A. Well, it was a meeting we had with Anita Katz going over general procedures in the gym.

Q. I mean just the four of you without Anita Katz.

A. A meeting?

Q. A conversation. A. We had many conversations.

911 Q. Just the four of you? A. Yes.

* * * * *

Q. On the 24th of March you testified you saw Paulette Anderson come in, is that correct, to the Little Neck place of business? A. Yes.

Q. You said it was about 1 p. m. ? A. Yes.

Q. You said it was in the gym. A. Yes.

* * * * *

912 Q. She was permitted to work that day, wasn't she?

A. Yes, she was.

* * * * *

Q. (By Mr. Blyer) Where are you presently employed?

A. Jack LaLanne.

Q. Which location? A. Madison Avenue, New York City.

Q. And your position there? A. Floor manager.

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913

DEE ARNOTT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Ms. Arnott, would you state your name and address? A. Dee Arnott, 134-38 Maple Avenue in Flushing.

Q. When were you first employed by Jack LaLanne?

A. November 28, 1974.

Q. '73 do you mean? A. '73.

Q. What were you initially hired as? A. Instructress.

Q. And were you working in December and January?

A. Yes, I was.

Q. Did you ever perform any cleaning duties at that time as part of your job? A. Yes, I did.

914

Q. What cleaning duties did you perform? A. Mopping, vacuuming, doing the leather which is part of the equipment, the chrome on the equipment, cleaning the bikes.

Q. Did you give any calisthenics classes? A. Yes, I did.

Q. What about taking people around with program cards?

A. Yes.

Q. You were given program cards at that time? A. Yes.

Q. How many would you be given, do you recall?

A. No, I don't. Depends on how many members were in at the gym at the time.

Q. Did you ever get a large number? A. Sure.

Q. Do you recall any memory of any times where you did get a large number? A. Oh, yes. I had received a large number of cards and many of the girls did. If the gym was very busy and you wondered what am I going to do.

JUDGE MALLER: Counsel, the term large number is rather indefinite. I can't tell whether a large number is 3 or 25.

Q. There were times you say when you had enough cards where you wondered what you were going to do with all of them?

915 A. Right.

Q. Did you bother specifically to count the numbers? A. No, but I would say approximately between 15 and 20 at one time or another.

Q. Those were the heavy times? A. Yes.

Q. What is your present position? Where do you work right now? A. In the Little Neck club as floor manager.

Q. Did you at the time you were working in December and perhaps early in January, in and around that period of time, ever observe Debbie Caron and Paulette Anderson getting more duties to clean up than anyone else? A. No, I did not.

Q. Did you ever see them getting consecutive calisthenics classes? A. Never.

Q. Was there any period of two, maybe even three weeks where they continuously had consecutive calisthenics classes at night that you recall? A. No.

Q. Did you ever observe whether they were getting more program cards, more members to take around than anyone else? A. No.

916 Q. When is your birthday? A. January 28th.

Q. With reference to your birthday do you recall any meeting with Anita Katz? A. Yes, I do.

Q. And other personnel? A. Yes.

Q. Do you know when the meeting was? A. The Friday before my birthday.

Q. Who was at this meeting? A. Anita Katz, Joan Holland, myself, Jackie Balabaos and Jeanne Murphy.

Q. What was said, do you recall? A. Basically it was a general meeting which we had frequently going over procedures of the gym which everyone should know.

At one point everyone was told that Joan Holland and myself were going into training as floor manager and assistant floor manager. Neither of us knowing which position we would have.

Q. Was there ever any time where you told Jackie Balabaos and Jeanne Murphy that they should stay away from Paulette Anderson and Debbie Caron? A. No.

Q. Was there ever any time where you told them the company
917 was trying to get rid of them? A. No.

Q. Did you ever hear Joan Holland tell Jackie Balabaos and Jeanne Murphy that the company was trying to get rid of Debbie and Paulette? A. No.

Q. Or that they were bad news and that these girls should stay away from them, anything like that? A. No.

Q. Did you become assistant floor manager? A. Yes, I did.

Q. Did you receive a raise? A. Yes.

Q. Do you recall when you received that raise? A. The second week of February.

Q. Was there any pin or bade you wore when you became -- A. Yes.

Q. When did you start wearing that, do you recall? A. The week before.

Q. What did that badge say? A. Assistant floor manager and it had my name on it.

MR. MONAT: No further questions.

JUDGE MALLER: Cross-examination.

CROSS EXAMINATION

Q. (By Mr. Blyer) When you were employed as an in-

918 structress, Ms. Arnott, what was your rate of pay? A. 125 a week.

Q. And once you became an assistant floor manager what was your rate of pay? A. 140.

Q. What was Joan Holland getting as floor manager when you were getting 140? A. I really don't know.

Q. Assistant floor manager. A. I really don't know.

MR. BLYER: Your Honor, without showing the witness I think the record would reflect that Joan Holland was getting $150.

JUDGE MALLER: Well, the record will so show if it shows on the exhibit.

Q. Did you know she was getting more than you? A. I would think so, yes.

Q. You were working now as a floor manager; isn't that correct? A. Yes.

Q. How long have you been a floor manager? A. Since the end of June.

Q. Since the end of June? A. Yes.

Q. What is your pay now? A. 150.

* * * * *

921 Q. When did the additional money first show up in your pay? A. From instructress to assistant floor manager?

* * * * *

924 Q. Ms. Arnott, did there come a time that you ever called into Mrs. Katz' office with Joan Holland or Wendy Lord where Anita Katz told you to give a lot of work to Debbie and Paulette because they wanted to get rid of them?

MR. MONAT: I object, Your Honor.

JUDGE MALLER: Overruled.

A. No.

925 Q. Did you ever hear that conversation? A. No, I did not.

Q. Anything like that? A. No.

Q. Now, in this conversation on the 29th of July with Rolinda Antone do you remember how it began?

MR. MONAT: Objection. I don't know what the witness has agreed there was a conversation.

MR. BLYER: I think she has, Your Honor, but I will ask her again.

JUDGE MALLER: Ask her again.

Q. Isn't it true that you had a conversation with Rolinda Antone on the 29th of July? A. Yes, there was a conversation.

Q. How did it begin? A. Rolinda walked back into the gym and started a conversation with me.

JUDGE MALLER: Please keep your voice up.

Q. She started a conversation with you? A. Right.

Q. Did you ask her during that conversation to tell you how it went at the Labor Board proceeding? A. No.

Q. You didn't ask her that at all? A. No.

926 Q. During the course of the conversation isn't it a fact that you told her you were being asked to testify, that you did not wish to get involved in this proceeding, did not want to lie, that they were going to "make me lie," that in fact you had been called into the office on one occasion? A. No.

MR. MONAT: Objection, Your Honor. I don't think any of that even if admitted is relevant.

JUDGE MALLER: Overruled.

Q. And that on one occasion you and Joan Holland or Wendy Lord were called in by Anita and told to give Debbie and Paulette a lot of work because they wanted to get rid of them?
A. No.

Q. Do you remember Rolinda Antone encouraging you to do what you felt you wanted to do, namely, not to lie? A. No.

Q. Did you go with Richard Kaufman to a party celebrating --

JUDGE MALLER: Just a minute. Counsel has asked you about details about a lone conversation as he put it.

Now, you answer there was no such conversation. Was there any part of that said in your conversation with Antone?

927 THE WITNESS: No, the conversation had nothing to do with that. It was something else.

JUDGE MALLER: Very well.

Q. Why don't you tell us what it was? A. What the conversation with Rolinda was? She came in and was talking about that she quit and I was discussing that with her and that is basically what the whole conversation was about, was her quitting.

Q. Wasn't there confusion over Rolinda quitting or not at a subsequent time? Wasn't it in August that you had such a conversation? A. Is there a calendar handy? I will tell you an exact date.

The date was July 29th.

Q. That you had a discussion over Rolinda quitting?
A. Right.

Q. And there was some confusion over that -- A. Yes.

Q. You don't think it was at a later date that you had such a discussion? A. No, I don't.

Q. Are you aware that the company recently sent her a letter verifying that matter? A. Excuse me?

Q. Are you aware the company recently sent her a letter
928 clarifying the situation of her status at the company?

MR. MONAT: Your Honor, I object.

JUDGE MALLER: Sustained.

MR. MONAT: We are getting into a new area.

Q. Did you have a conversation with Mr. Richard Kaufman? Did you go with Mr. Richard Kaufman to Steven Wolf's party?
A. Yes, I did.

Q. When was that? A. Saturday, August 10th.

Q. And on August 9th, on Friday, did you have a session with Mr. Monat regarding your testimony in this proceeding?
A. Yes.

Q. During the course of that proceeding did you tell anything to Mr. Monat that you thought you said was very unfair that the company did to Richard Kaufman?

MR. MONAT: Objection. I would like that question carefully phrased or at least read back.

MR. BLYER: I will rephrase it.

Q. Did you tell Mr. Monat during the course of that conversation that you felt the company did something unfair to Richard Kaufman? A. No.

929 Q. You didn't talk about the fact that his calisthenics classes were taken away? A. No.

Q. Did you talk at all during that trip to Steven Wolf's party about your preparation for this proceeding? A. Not my preparation, no.

Q. Whose preparation did you talk about? A. Would you like to tell me -- tell you exactly what I said?

Q. Well no, I don't want you to tell me that. I would like to know about whether you had any conversation with Mr. Kaufman about this case.

MR. MONAT: Your Honor, I object. I believe now counsel asking the witness about areas that are clearly very sensitive and not only that he has even involved counsel, myself at this point, peripherally, of course, and I think the witness should be allowed to answer this thing without very restrictive questioning.

JUDGE MALLER: You will have a chance on redirect to bring out whatever you want.

Q. Did you have any discussion with Mr. Kaufman about this case? A. Yes.

Q. Did you mention to him you told Mr. Monat that you felt that the cutting off of his calisthenics classes was unfair?

930 A. No.

Q. Did you mention anything about the fact that you thought it was unfair that Jacqueline Balabaos was made a receptionist?

A. Excuse me, repeat the question.

Q. Did you tell Mr. Kaufman that you told Mr. Monat that you felt it was unfair that Jacqueline Balabaos was made a receptionist?

A. No.

Q. Did you tell him you didn't really want to testify in this proceeding? A. Yes.

Q. Did you tell him why you didn't want to?

MR. MONAT: Tell who?

MR. BLYER: You.

THE WITNESS: Excuse me, the question you asked me was did I tell Mr. Monat that I didn't want to testify?

Q. Right. A. The answer is no.

Q. You told Mr. Kaufman you didn't want to testify? A. Yes.

Q. Did you tell him you didn't want to testify because you didn't want to lie?

JUDGE MALLER: Did you tell that to Richard Kaufman?

THE WITNESS: That I didn't want to lie?

931 Q. That is why you didn't want to testify? Didn't you tell that to Richard Kaufman? A. No.

Q. All the testimony you have given today has been the truth under oath? A. Yes.

Q. To your knowledge have they ever had an assistant floor manager at Little Neck prior to you? A. I really don't know. I was not with the company at the time.

Q. I know you weren't that long but wasn't there some discussion among the employees that this was a new title and people were kidding about it, assistant floor manager? A. Not to my knowledge.

Q. Don't you recall that? A. Not to my knowledge.

Q. Do you know of anyone who was ever an assistant floor manager at Little Neck? A. No.

Q. You said on the 25th an announcement was made by Anita Katz to the effect that you and Joan Holland were in training for the position of floor manager and assistant floor manager. A. That is correct.

932 Q. But that neither of you designated to be in training for floor manager or assistant floor manager but that you were both in training for both positions? A. Right.

Q. Thereafter Joan Holland prepared these weekly payroll sheets. Did you ever prepare these weekly payroll sheets?

JUDGE MALLER: Identify the exhibit.

MR. BLYER: Respondent Exhibit No. 9 beginning with January 25, 1974.

Q. Did you ever prepare any of these weekly payroll sheets? A. No.

Q. During this period from the time the statement was made allegedly that you were in training, from the 25th, correct, of '74, you were in training for how long? A. I really know it approximately would be a week or two weeks.

Q. Before you claim it was announced that you were in fact the new assistant floor manager? A. Well, let's see, I started training, the announcement was made the 25th and the first week of February I became assistant floor manager.

Q. So you were only in training for about a week or so? A. A week.

Q. And prior to that you were not in training at all?

933 A. Not really, no.

Q. Not really? What does not really mean? A. Well, when you first come into a company my position was I really didn't want to stay an instructress. You always want to move ahead, okay, so you got to work harder and listen, keep your eyes open, wanting to become a floor manager, assistant floor manager, whatever.

Q. Which you are now? A. Floor manager, yes.

Q. So what does it mean not really? That you were not really in training? What do you mean by that? A. I did not have supervisory training as I did with Anita Katz at the time. I was picking up things here and there from Anita, how she acted, how she ran the gym floor, how she was showing us little by little.

Q. Were you told you would be considered for the job? A. At what time?

Q. At any time prior to the 25th. A.. No.

Q. So up until then you had no knowledge that you were being considered as for the job of floor manager? A. Right.

Q. Then in a week's period of time you underwent training for that position? A. Right.

934 Q. After a week it was announced that they had decided to make you assistant floor manager and Joan the floor manager.
A. Right.

Q. As part of that training you were never instructed to fill out those payroll sheets; is that true? A. We were training how to fill out payroll sheets but no, I never filled one out.

Q. It was just Joan? A. Right.

Q. Anita Katz was there at the time, correct? Who was giving you the training? A. Anita Katz.

Q. You started wearing the badge immediately upon being told you had been given the position of assistant floor manager?
A. Yes.

Q. And you got the raise a week later in your pay?
A. Yes.

Q. Were you present one night I believe in late February of '74 when Pete Trainer was working as the man in charge of the gym? Do you know Pete Trainer? A. Yes, I do.

Q. Do you remember a night that Richie Kaufman taught
935 classes, calisthenics classes? A. He taught one class at one time that I was there.

Q. Pete Trainer was there at the time?

MR. MONAT: Your Honor, I object.

JUDGE MALLER: What is the objection?

MR. MONAT: Bringing up new matters here.

JUDGE MALLER: I can't tell at this point. I don't know what this is about.

Q. Pete Trainer was -- A. I really don't remember if he was there or not.

Q. Were you asked that night that Richie Kaufman was there to teach the class? A. Yes.

Q. And you didn't do it? A. No.

Q. Do you know of any conversation with Mr. Wilton and Richie Kaufman that night about teaching the class? A. No.

Q. Did you have a conversation with Mr. Wilton that night about Richie teaching the class?

MR. MONAT: I object.

JUDGE MALLER: Overruled.

A. No.

Q. Wasn't it told to you by anyone in the position of management that you should keep it under your hat about Richie teaching the
936 class and that it wasn't to get to Mr. Schwartz or anyone else?
A. Yes, that is true.

Q. That was told to you? A. Right.

Q. Who told you that? A. I really don't remember.

Q. Who would have told you? Was it Mr. Wilton the man who told it to you? A. Excuse me, but that night was my day off and we were all gathered around, there was a few of us instructors included and I really don't remember who told it to me. Could have been an instructor, it could have been Mr Wilton, it could have been anybody.

Q. Who was there, do you remember? A. The only person that I remember is myself and Richard Kaufman.

* * * * *

938 Q. Did anyone at management ever tell you why Richard was not getting classes? A. No.

* * * * *

940 Q. Just to make it clear when you said you knew why Richie wasn't supposed to have a class, wasn't supposed to teach classes, what were you basing that on? A. A comment that Richie Kaufman had made to me.

Q. No other conversations with anyone in management? A. No.

* * * * *

942 REDIRECT EXAMINATION

Q. (By Mr. Monat) Do you, Mrs. Arnott, recall a situation, without going into it, involving Mrs. Antoine quitting last week.

JUDGE MALLER: A week ago?

MR. MONAT: Yes, last week. Not this week, but last week? A. No. Yes, yes, I do.

Q. Were you aware, going back now several weeks, all right, to July, were you aware of the fact that we had hearings here the

943 week I think it was, July 16th, 17th, 18th, and 19th in this case? A. I don't remember the exact dates. I know there were hearings, yes.

Q. The first time you were actually at the hearings today and yesterday? A. Yes.

Q. Do you remember was there a period of time around those hearings where Rolinda Antone was not in to work? A. Yes.

Q. Do you remember how long there was a period of time when she didn't come in? A. I would say almost two weeks.

Q. Do you recall if after the hearings she came at all?
A. Yes.

Q. Do you know after the hearings was there any week where she skipped, do you recall? A. Maybe one or two days, you know, that she didn't come into work.

Q. After she did come to work did you have any conversations with her, before last week now?

Last week we are talking about, last week was the week of August 5th, 6th, 7th, 8th and 9th, I believe.

Did you talk to Rolinda before, before last week about any absence she had around the time of the hearings? A. Yes.

944 Q. About when do you think you talked to her?
A. When she was out and hadn't shown up to work I had given her a call.

Q. What was that call about? A. Why she hadn't appeared at work.

Q. Do you remember what was said in that conversation?
A. Just about. I had asked her why she didn't come in for work and she gave me the whole explanation why she didn't come in.

JUDGE MALLER: What was that explanation?

THE WITNESS: She had been in a room with her daughter and her daughter knocked a picture off and caused a slight concussion. It had hit her in the head.

Q. So you do recall a conversation before last week? That is what I am asking. A. Yes.

Q. I want to make it clear I haven't spoken to you since recess, have I? A. No.

MR. MONAT: Nothing else, Your Honor.

RECROSS EXAMINATION

Q. (By Mr. Blyer) Did she tell you she was at the doctors about this concussion she had? A. She had mentioned to me that she had gone to the doctors, yes, to get it X-rayed.

945 Q. Is this the telephone conversation? A. Yes.

Q. You called her at her home? A. Yes.

Q. And on the 29th of July was that also a telephone conversation? A. No, it was not.

MR. BLYER: Thank you.

JUDGE MALLER: Very well, thank you, Mrs. Arnott, you are excused.

We will recess for lunch until 2:15 P.M.

946 AFTERNOON SESSION

JUDGE MALLER: The hearing will be in order.

MR. MONAT: Your Honor, I would like to recall briefly Joan Holand.

JUDGE MALLER: Yes, certainly.

Mrs. Holand, take the stand. You are still under oath, Mrs. Holand.

BARBARA JOAN HOLAND

having been previously sworn resumed the stand and testified further as follows:

CONTINUED REDIRECT EXAMINATION

Q. (By Mr. Monat) Mrs. Holand, there is one more thing I want to ask you about. That is, do you recall subsequent to March 25th seeing Paulette Anderson again? A. Yes, I do.

Q. When was that? A. Oh, I'd say about two weeks later.

Q. What happened at that time? A. Paulette came to pick up her final paycheck and return her uniform and name plate.

Q. Were there any papers that you gave her, do you recall? A. Yes.

Q. What happened with those papers, if you recall?

A. Well, Paulette came in the gym and I believe I had to go

947 and get her check out of my notebook.

I went into the office with her and there were papers attached to the check. I took the check over and handed her the papers and asked her to sign them.

She signed the first ones and she did not want to sign the bottom one that was attached and when I read it I realized that it didn't pertain to her so I just left it off to the side.

Q. What was that bottom paper? A. It was a resignation notice, resignation form.

MR. MONAT: No further questions.

JUDGE MALLER: Any cross?

MR. BLYER: Yes.

FURTHER RECROSS EXAMINATION

Q. (By Mr. Blyer) Had you been floor manager at that time? A. At the time Paulette picking up her check?

Q. Yes. A. Yes.

Q. Had you been floor manager a month or two or two months? Withdrawn, Your Honor.

Had you had any occasion while acting as floor manager to see where other employees were terminated or quit or anything like that? A. Yes.

948 Q. Do you know how these papers that you said were attached to the check got there? A. They came in from the main office that way.

Q. Do you know that for a fact? A. Yes, I do.

Q. Where is the main office? A. Not it is located --

Q. Now, at that time. A. In March Lake Success.

Q. Lake Success? You testified on direct that you read everything that you sign beforehand; isn't that correct? A. Yes, I do.

Q. Did you read what you handed Mrs. Anderson on that occasion before you asked her to sign it? A. No, I did not. I knew what it was.

Q. You knew what they were? A. Yes, it is a regular form we give to anyone that leaves the employ of Jack LaLanne.

Q. But then after you gave it to her and she refused to sign it your testimony is that you realized it didn't pertain to her? A. Right.

Q. Did she respond or said anything to you when you asked
949 her to sign? A. I didn't ask her to sign.

Q. You gave it to her, didn't you? A. Yes.

Q. What did you want her to do with it? A. I wanted her to complete forms the way they should be.

Q. What is supposed to happen? A. To sign them but I didn't ask her to sign that particular form. I just handed her the group of forms.

Q. By handing her the group of forms what did you expect her to do with them? A. To sign them.

Q. So you did expect her to sign them? A. Yes.

Q. By handing them to her you were asking her to sign them? A. Yes.

Q. When she told you she would not sign it did she say anything else? A. No.

Q. Nothing at all? A. Not that I remember.

Q. Just gave them back to you, gave you that one back? A. She gave them all back to me.

950 Q. Do you recall telling her that she had to sign it or you would not give her check to her? A. No.

Q. What about -- A. Not that form.

Q. The first form dealt or had something to do with the uniform that she handed back? A. Return uniform in good condition and her name tag.

And that she was receiving her final pay with no moneys due to her.

Q. Before she got her pay she had to sign that, right? A. Right.

Q. With regard to the second one, the second notice which says that she left on her own accord, is that what the second one said? A. Yes.

Q. Didn't you tell her she had to sign that too before she got her pay? A. No.

Q. Didn't you withhold her pay telling her she wasn't going to get it until she signed it? A. No, I withheld her pay because the uniform was not with her and she had to go out and get it. That is why I withheld.

Q. You understand she had to sign it, the first one and return the uniform before she was going to get her pay. I'm

951 asking about the second one. A. No, I did not.

* * * * *

GABRIELE SCHWARTZ

was called as a witness and having been sworn by Judge Maller, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mrs. Schwartz, you are the wife of Harry Schwartz? A. Yes.

JUDGE MALLER: Have her identify herself by name, please.

Q. What is your name and address? A. Gabriele, G-a-b-r-i-e-l-e Schwartz, S-c-h-w-a-r-t-z. My address is 1680 Bay Boulevard, Atlantic Beach.

Q. What is your position at the company? A. I'm the service supervisor over all female personnel at the Jack LaLanne Organization and as of recently also over the male service.

952 Q. Going back to the period of June 1973 through March of '74 were you service supervisor during that period? A. Yes.

Q. For the females? A. Yes.

Q. What was your function in that position? A. I was in charge of hiring personnel, see to it that they are being trained, that all positions are being filled properly and staffed properly at all the gyms.

I am in charge of time sheets that they are being sent into the main office properly.

I check them and I see to it that all records are kept in order. Locker attendants. I'm in charge of certain records I have to keep. Statistics.

Q. What about staffing gyms? A. Staffing gyms, all gyms.

* * * * *

957 Q. Subsequent to the November hearing I think there was testimony that Paulette testified on November 5th; do you recall that? A. Yes, she testified.

Q. Do you recall any incident with her? A. No.

Q. Was there any time that you had an occasion to get a phone call from Paulette? A. Yes, it was the middle of November.

Q. Tell us about that. A. It was approximately the middle of November Paulette Anderson had called in on a Monday, early afternoon I believe it was, around 1 o'clock and I happened to be in the lobby because I was looking for the floor manager at that time, Nancy DeMasi, and the receptionist.

I overheard her saying there was a phone call for Nancy DeMasi from Paulette Anderson and I said Nancy is in a class right
958 now, let me take the phone call which I did.

Paulette Anderson told me that she would not be attending work that night due to the fact that she had trouble with her car getting started.

The end of the conversation was that I told her, I said I appreciate her calling and I will take care of the matter and I will relate the message to Nancy DeMasi and that was the end of that.

Q. Did you see Paulette later at all? A. Yes, she was there at 6 o'clock.

Q. Did you have any conversation at that time? A. Yes, I did.

I had to check something on the payroll since we do prepare and check, since we are checking our payrolls on Mondays before it is being put through, and I checked something with Nancy on the gym floor and I see Paulette Anderson there. It was shortly before 5 o'clock, and I said, "Paulette, what are you doing here?"

She said, "Well, I'm working," and I said, "Let me see you in the office for a second. You are putting me in a very awkward situation.

You were calling up you would not be able to come into work tonight and here you are.

I tried to get a girl from Lefrack City to come here to take
959 your place and now I'm in a situation where I will have an extra girl working here at Little Neck, at the Little Neck gym. What is your reason for this?"

She said, "Well, I reported to work," and she got very annoyed about the whole thing and she told me, "I'm sick and tired of your harassing me."

I said, "Paulette, I don't understand what you are referring to. Who is harassing you?"

She says, "Well, I think it is completely unnecessary for you to reprimand me because I reported to work."

She says, "Are you doing that just because I testified against you on the November 5th hearing?"

So I told her very point blank, and at that time I got rather annoyed about that. I said that whatever she said on the witness stand has not -- no bearing in reference to our business relationship at the Little Neck gym or any other place and whatever was said on the witness stand has got nothing to do with this kind of situation at the present time.

"I don't prefer to go into this issue, I have no -- I just don't want to discuss anything," and I made a joke out of it because she was uptight and I was uptight.

I said, "Look, Paulette, forget about it, let us go on the gym floor, but cool down and just progress and do your work."

Q. Do you recall there was a union election on December
960 12th and 13th? A. Yes, I do.

Q. Now, do you recall receiving any phone calls at your home prior to those dates? A. Yes, I did.

Q. Approximate y when with respect to December 12th? A. It was approximately within 10 to 7 days prior to the election.

Q. Would you tell us how many calls you had and what was it? A. I received two phone calls on two different nights between 11 and 12 o'clock at night and somebody was obviously with a hush hush up voice said to me they are after my hot body.

JUDGE MALLER: They are what?

THE WITNESS: They are after my hot little body and heavy breathing on the phone, and then --

MR. BLYER: Your Honor, I would like to make an objection to the relevance of this.

JUDGE MALLER: Unless you can identify who made the calls.

MR. MONAT: Your Honor, it is relevant again as I think I have stated earlier in this hearing that goes to the mind and motivation of Mr. Schwartz at a later point in a later conversation.

961 MR. BLYER: Your Honor --

JUDGE MALLER: I can't see that. Objection sustained.

MR. MONAT: I would like to identify a document as Respondent Exhibit I believe No. 13.

(Document marked Respondent's Exhibit No. 13 for identification of this date.)

Q. Now, that is a check, is it not, Mrs. Schwartz? A. Yes.

Q. Who is that check made out to? A. Paulette Anderson.

Q. Whose signature is on the check at the bottom on the front side? A. Harry Schwartz.

Q. Is it endorsed on the other side? A. Yes, by Paulette Anderson.

Q. Do you recall what the date is on that check? A. February 11, 1974.

Q. Do you recall a conversation with Paulette Anderson prior to February 11th? A. Yes, on Friday, February the 8th.

Q. What was it, in person or on the phone? A. On the telephone.

Q. Tell us what was said in that conversation? A. I
962 started the conversation by telling her that I was happy that she could help us out at the Woodmere gym to replace a part time instructress who we had just lost by the name of Leanne Kopf. And that we are really in need for her to help us there and that due to the fact that we have a gas shortage, plus the increase of the gas prices, that she had additional mileage to go to the Woodmere gym and that we would compensate her with $5 per week for her extensive traveling for her additional traveling expenses.

Q. Anything else said? What did she say, do you recall? A. Paulette, she was kind of thrilled about it. She said, "Gee, I didn't either ever expect that and I'm really feeling very nice about that and thank you very much for it," and that was the end of the conversation.

I wished her a bood day and that was it.

Q. Do you recall a conversation with Anita Katz on Friday, March 22nd? A. Yes.

Q. Would you tell us about that? A. Anita Katz informed me in reference to the shortages we had pertaining to a staff coverage

at the Madison Avenue gym and in conjunction with the shortage at the Biltmore gym and also at the 86th Street Club Gym, and she had told me she had made numerous phone calls in reference to the club
963 covered at the Madison Avenue Club for the following week.

She was very unsuccessful and the only person who could go at that time was Paulette Anderson and that she had a conversation on Friday night where Paulette Anderson completely adamantly refused to accept any such transfer.

Q. The conversation you had with Anita, when was that?
A. I had two conversations.

Q. I just want to know the Friday conversation. Did you have one on the 22nd, March 22nd? A. I did.

Q. That is the only one I want to know.

Now, on March 25th did you have another conversation?
A. Yes.

Q. Would you recall where that was? A. She called me early on Monday.

JUDGE MALLER: Who is she?

THE WITNESS: I'm sorry, Anita Katz called me on March 25th on Monday earlier and she relayed the numerous conversations she had had with Paulette Anderson on Friday, and on Sunday pertaining to the transfer into Madison Avenue.

She said that Paulette utterly refused to accept any kind of transfer and that she said, "If you force me to transfer I will go to the Labor Board."

964 Q. After you spoke to Anita what did you do? A. I told her not to do anything at that particular point.

Q. What did you do? A. I called my lawyer.

Q. What happened then? A. My lawyer advised me to have Paulette Anderson get another chance on Monday to accept the temporary transfer into Madison Avenue for that week.

Q. Now, did you speak to anyone else after that?
A. Yes, I called up Joan Holand, the floor manager at Little Neck and I told Joan that Paulette Anderson had been transferred as of today, Monday, into the Madison Avenue Gym.

If by chance she should show to start working at the Little Neck gym to please have her speak to John Wilton, the spa manager at the Little Neck gym at that time.

Q. Did you speak to John Wilton? A. Yes, I did.

Q. What did you discuss with him? A. I told him the same. I told him if Paulette by chance should come into assume her job, to assume work on Monday night, to please give her one more chance to go down to Madison Avenue.

Q. Do you recall any time where Dotty Schwinger I believe
965 it is tried to give you a letter from Paulette Anderson?
A. No.

Q. Prior to that hearing that we are in now did you have any knowledge about that letter that Paulette had written?
A. None whatsoever.

Q. Do transfers ever occur of any kind in your operation?
A. Yes, most definitely. It is a very normal kind of a thing, every day, every week, every month.

Q. Anything unusual in your mind about a transfer in your operations? A. No, not at all.

Q. Going back over the past year could you tell us of any transfers and fromwhere they were and to where and who?

JUDGE MALLER: Hasn't that already been covered by Mrs. Katz?

MR. MONAT: I would like Mrs. Schwartz to cover it as well.

JUDGE MALLER: What is the purpose? Is there any dispute?

MR. MONAT: I don't know if there is a dispute or not.

966 JUDGE MALLER: Is there any dispute about it, Mr. Blyer?

MR. BLYER: About what, Your Honor?

Various transfers that we made by other people, of other people?

If I dispute it I haven't prove anything to the contrary. I would just add --

JUDGE MALLER: Do you intend to dispute it or go into it? If so, I will have to give him a chance to get cooperation If not there is no point.

MR. BLYER: I am not going to dispute the transfers themselves, Your Honor, no.

I think there is something about the transfers. No, I am not disputing that there were transfers of certain employees. I'm not disputing that.

MR. MONAT: Well, I don't know if General Counsel is going to distinguish between transfers or something like that.

MR. BLYER: I think there is something to be distinguished.

One, I think the relevant points are that we should be talking about transfers from Little Neck out. We should be talking about females.

The period of time should be approximately around the same period of time and I think the type of employee, a part time employee.

967 JUDGE MALLER: I will let him go into it if you are --

MR. BLYER: But just on those. I would agree with you, I'm not going to challenge that there were transfers other than individuals, perhaps full time employees or employees at different spas, so I think to narrow the issue we should just find out what I might dispute.

JUDGE MALLER: All right, I will let him go ahead.

MR. MONAT: Of course again, Your Honor, I refer you to the language in both the representation decision, the Regional Director and Judge Stevenson's decision where there was talk of the combination of transfers.

Q. Would you tell us about the transfers, from where to where and who? A. Dennis Pillinger from Little Neck into Woodmere.

Peter Statile, lifeguard.

MR. BLYER: Are we going to get dates or just get names?

JUDGE MALLER: I don't know. I can't read counsel's mind.

MR. BLYER: I object on the grounds we don't know what period of time we are talking about.

MR. MONAT: I asked during the past year, Mrs. Schwartz, if you can specify it any better, if you can recall any particular

968 ones any better you give us some specifics.

Go ahead. A. (Continuing) Peter Statile was in the last three weeks from part time lifeguard from Little Neck into Flatbush, the Brooklyn gym.

Drew Bastonto, floor manager from Lefrack City to Little Neck, back to Lefrack City into Woodmere.

Richard Kelly, lifeguard, Flatbush Avenue gym into Executive back to Flatbush, into the Biltmore, back to Flatbush into Kings Highway, back to Flatbush.

Pat DiSimone, lifeguard, transferred between Flatbush, Kings Highway, Biltmore.

Keith Woznick, part time instructor from Flatbush into the Biltmore to Kings Highway, to Executive, back to Flatbush.

Ed Mullin, part time lifeguard from Kings Highway to Flatbush. Flatbush to Biltmore. Last week to Executive, back to Flatbush.

Susan Stewart, full time instructress from Woodmere into Little Neck, from Little Neck back to Woodmere.

Alice DeGrasso, full time instructress from Little Neck to Lefrack, back to Little Neck into Woodmere, back to Little Neck.

Edie Smithwych, full time from Little Neck into Madison.

969 Wendy DeLord, I think she started in Little Neck, Little Neck, Madison. She also worked in the Biltmore at one time. She was transferred to Little Neck.

Estelle Hecht from Lefrack to 86th Street, 86th Street back to Lefrack, back into Little Neck and then back to Lefrack.

Tamara Drasen, part time receptionist, Kings Highway, two weeks ago worked at Madison Avenue, back to Kings Highway.

Q. I think that is enough for now, thank you.

Now, what about hours of part time instructors? Are they permanently affixed or do they ever change, do you know? A. They are changed.

Q. Give us any examples of changes in hours? A. Well, when a part timer is originally hired we naturally do give her the hours which we at that point need covered at any particular location.

Now, taking into consideration the seasons of operation, there does come very often a time when part time hours vary quite a bit due to summer vacations of staff, other staff members in any location that a part timer might have their hours increased to cover the positions.

During holidays season like Christmas or any kind of holidays

970 that there might be a shortage, that part timers will increase their hours.

There might be a time maybe hours are decreased due to the slow periods of the operation itself.

Q. Is there any fixed time or fixed schedule when hours have to be changed? A. No, we don't fix that time period. We are going by hour -- we take many things in consideration when we change hours in general, such as the time of the year and we check through our work statistics how heavy the gyms are and how is the traffic coming in. It might be very slow.

Q. You are talking about women or men now? A. I talk specifically about women.

Q. When did you start being involved with the men? A. I started getting involved approximately in April, the end of April.

MR. MONAT: No further questions.

JUDGE MALLER: You may cross examine.

CROSS EXAMINATION

* * * * *

972 Q. (By Mr. Blyer) You had a conversation with Paulette Anderson in mid November relating to her car problem. A. To her car problem?

Q. Yes, she had problems getting to work. A. She called me in the middle of November on a Monday telling me that she can't get her car started or she has some problems with her car and it is impossible for her to come in that night at 5 o'clock to Little Neck.

* * * * *

974 Q. Did you believe the fact that she showed up that evening was sufficient to discharge her? A. I didn't discharge her.

Q. I ask you did you think that was sufficient to do that? A. I just thought that Paulette Anderson has worked with us long

enough to know how we operate when somebody calls in who cannot report to work, that we will take certain steps, and I thought I was put in a very awkward position and I felt I was being made a fool of, that she called she cannot come in and she shows up without notifying anyone.

Q. Did you think that was sufficient to discharge her?

A. I wouldn't have really discharged her because I did reprimand her about that, I didn't appreciate her action.

* * * * *

Q. I asked you do you think that was sufficient, the fact that she showed up that evening that you should discharge her? A. I felt it was necessary for me to give her a warning about that, that I didn't appreciate her handling the situation in the manner she had.

Q. What about discharging her? A. I didn't discharge her.

Q. We know that, but did you feel it was sufficient to discharge her or not? A. I felt I was tempted to discharge her because of her tone of voice. Paulette Anderson, I believe we have never spoken to each other in that manner as she was very arrogant and very adamant to me.

Q. Did you feel it was sufficient to discharge her?

A. I was tempted but I didn't.

* * * * *

Q. During the first six months of 1974, Mrs. Schwartz, how was your business in relation to six months prior?

* * * * *

A. Six months prior would be from June until December. We would have a low in June because during the summertime we would

981 have a low. During September, the Jewish Holidays, we would have a low, during Christmastime because we didn't have that many workouts during these times and in January, February, I guess it was just normal.

Q. I'm really talking about memberships. Have your memberships steadily increased over the years at Douglaston and --
A. It increases every year. We are selling memberships every day.

Q. At Douglaston? A. We are selling memberships in our business every day and service them.

* * * * *

982 Q. There has been no decrease in the number of employees necessary to staff your Douglaston gym, has there? A. Oh, just now there is a decrease, sure.

Q. In the first six months from January through June you didn't have any decrease in staff, did you? A. At times, we did, yes.

Q. From January through June? A. Yes, it was getting very slow after 8, 8:30 at night.

Q. January, February, March and April, isn't that the busy season for you? A. It all depends what you consider busy.

* * * * *

983 Q. January, February, March and April isn't that normally the time of the year that you were getting quite a few members coming down to the gym for working out? A. Definitely.

Q. You said that on March 22nd you had a conversation with Anita Katz and if I heard your testimony correctly you said that there was a shortage at all three gyms; is that correct? A. That is correct.

Q. Which three gyms are you talking about? A. Madison Avenue. We had a part-time instructress out sick who also --

Q. Just tell me where the shortages were. A. In Madison at 55th, at the Biltmore and at 86th Street.

Q. To your knowledge Paulette Anderson was never offered to go to these other gyms; is that right. The Biltmore and the other two you mentioned? A. Because --

Q. Just answer the question.

The answer was what? A. I wouldn't know about that. I didn't

984 handle the whole thing.

Q. To your knowledge was she ever offered an opportunity to work at these other two Manhattan Gyms that you just mentioned? A. Anita only told me about the final conversation she had with reference to a temporary transfer of Paulette Anderson into the Madison Avenue Gym.

Q. You also testified that Anita said to you Paulette Anderson was the only person who could go? A. She was the only person at that time who was left without any good cause who could not accept a temporary transfer to Madison.

Q. On that telephone conversation did she elaborate what she -- A. I can't hear you.

Q. Did Anita Katz in that conversation elaborate on what she meant when she said that Paulette was the only person who could go? A. On Friday or Monday?

Q. On March 22nd, that is the date you two had the conversation. A. She told me that she had kind of exhausted her sources. She had called numerous other people and they had all given her reasons as to why they couldn't go and Paulette was the only one who could go at that time.

985 Q. The only one who could go? A. Who could go.

Q. She didn't say Paulette said she could go? She didn't tell you that Paulette said she could go? A. She didn't say that Paulette said so, she said to me she had a conversation with Paulette asking her to go down to Madison Avenue.

Q. Was it your decision to fire Paulette Anderson? A. I never made a decision in reference to Paulette Anderson being fired, period.

Q. Who did? A. Nobody.

Q. No one fired her? A. Nobody fired her.

JUDGE MALLER: I'm sorry, I can't hear you.

THE WITNESS: Nobody made a decision to fire Paulette Anderson at that time.

Q. John Wilton told her she was fired, didn't he? A. John Wilton gave her a last chance when she came into accept her transfer to Madison and then she brought out her paper stating that she is no longer working there.

Q. You are saying that she resigned? A. I wasn't there.

Q. Well, could John Wilton fire her on his own?

MR. MONAT: Objection, Your Honor.

986 JUDGE MALLER: Overruled.

Q. Could John Wilton fire Paulette Anderson on his own? A. As a Spa manager he can fire any employee if he felt it was a real bad situation, somebody stealing money or somebody doing all kinds of bad things.

Naturally he would have to terminate that person.

Q. Did John Wilton fire Paulette Anderson? A. I don't think he did.

Q. Did Anita Katz? A. Anita Katz, she did not fire Paulette Anderson on Monday night.

Q. At any time? A. No.

Q. And did you fire her? A. No.

Q. So you are suggesting now that Paulette Anderson by pulling this piece of paper was telling John Wilton and Joan Holand she was resigning?

MR. MONAT: I object, Your Honor.

JUDGE MALLER: Overruled. This is cross-examination.

A. I wasn't there when Paulette was in the Little Neck gym.

Q. So it is your testimony that you never made any firm or you never conveyed to anyone that Paulette Anderson should be fired?

987 A. No.

JUDGE MALLER: That is your testimony?

THE WITNESS: That is correct.

Q. Did John Wilton ever tell you that he had fired her?

A. John Wilton called me that night at about 8:30, 9 o'clock after Paulette Anderson had left and we spoke about the incident.

JUDGE MALLER: I can't hear you.

THE WITNESS: He told me about what happened when Paulette Anderson was there.

Q. Did he tell you that he fired her? A. He told me that Paulette Anderson came in at 6:20, 6:30 and that he --

Q. Why don't you answer my question? Did he tell you that he had fired her? A. He told me -- the only thing John Wilton told me that night was that he had given Paulette Anderson a final chance to go down to the Madison Avenue gym that night, that she was not to work at Little Neck and that Paulette Anderson came there with a friend of hers and she then presented a piece of paper to John Wilton.

Q. You mean that after he said to you that, after he told her that "Look, I'm giving you one more chance to go to Madison" -- A. Yes.

988 Q. (Continuing) And she said, "No, I'm not going," that Paulette Anderson then said, "Well here, I want you to sign this." A. I don't know what Paulette Anderson said to him.

Q. Did Mr. Wilton tell you that? A. He did not tell me that. All he said to me that Paulette Anderson proceeded to pull out the paper and give it to him. She presented the paper to him at that time.

Q. You told Mr. Wilton to give her one more chance, didn't you? A. Yes, early that day.

Q. What do you mean by give her one more chance? A. To accept a temporary transfer to Madison.

Q. Or else what? A. Else nothing.

MR. MONAT: Objection, Your Honor.

JUDGE MALLER: Overruled.

Q. Or else nothing? A. Or else nothing.

Q. So you mean if she didn't pull out this piece of paper she still could be working there?

MR. MONAT: Objection.

JUDGE MALLER: Overruled.

Q. If Paulette Anderson didn't pull out that piece of paper

989 she still could have been working there; is that right, as far as you are concerned? A. She would have had to go to Madison Avenue that day.

Q. And she said no, she said she is not going? A. She was not supposed to work this night at Little Neck gym.

Q. You told John Wilton to give her one more chance to go to Madison? A. Right.

Q. And Mr. Wilton did that? A. I hope he did.

Q. Now, you said when I asked you why did you mean give her one more chance, and I asked you or else, or what?

What was he supposed to do if she refused? A. Not to let her work that night at Little Neck.

Q. That was it? A. That was it.

Q. Not to let her work that night? A. That's right.

Q. So as far as you know Wilton never told her she was fired? A. As far as I know he didn't.

Q. And Joan Holand who was there at the time never told her she was fired? A. No.

990 Q. It was just Paulette Anderson causing her own discharge when she told them, "Well, my services are no longer needed, won't you sign this?"

MR. MONAT: Objection, I think he is asking for a legal conclusion by the witness.

JUDGE MALLER: No, I think the question is quite clear.

Q. In a sense she caused her own discharge, she took out a piece of paper and on the paper it said, "My services are no longer needed," and then there was some talk about the language on the piece of paper and everyone agreed and they signed it and that was it? A. That was it.

Q. Didn't you reprimand Mr. Wilton and Mrs. Holand for firing -- A. Reprimand for firing?

Q. For letting her go? A. They never fired her. There was no reason for her -- for them to fire her. She initially came in late, she was not prepared to work and she brought in this piece of paper.

Q. It is your testimony the only thing you wanted Mr. Wilton to do was not to let her work that night? A. At the Little Neck gym.

Q. And here he goes ahead and confirms her discharge by
991 signing and even correcting this piece of paper that Mrs. Anderson proffered?

MR. MONAT: I object.

JUDGE MALLER: Overruled.

Q. Did you reprimand him for that? A. Reprimand him for what?

Q. For letting her go. A. I did not reprimand him for that.

Q. Wasn't she a valuable employee to you? A. Paulette Anderson?

Q. Yes. A. I hope all our employees are valuable to us.

Q. What about her in particular?

JUDGE MALLER: Answer the question?

Q. What about her in particular? A. She too.

* * * * *

992 A. After she was there three weeks she came back to Little Neck.

Q. She worked there during the gas crisis; is that right? A. The gas crisis was for a long time. She worked there for three weeks.

Q. And she lives in the Bronx which is quite a distance? A. I believe so, yes.

Q. To Woodmere? A. Yes.

993 Q. She also had done modeling for you in the past, had she?

MR. MONAT: I object.

JUDGE MALLER: Overruled.

Q. Hadn't she done modeling for advertisements in newspapers? A. Our staff members do pose for some of the newspaper ads.

Q. I know your staff members may pose but what about Paulette Anderson? A. I believe she did too.

Q. And these were run in the newspapers for a substantial period of time; isn't that correct? A. Yes.

Q. And beyond her regular salary she didn't get any other recompense for that posing, did she? A. I can't recall that at all.

Q. Now, did you ever give any of your employees extra money for posing? A. I assumed that it was arranged either through Mr. Schwartz or our general manager, Tom Sansome that any employee who be there posing maybe gets paid hourly if they kind of time would be involved.

Q. The same pay that she would have gotten or that he would have gotten if he had been doing his normal job? A. I guess so, sure.

994 Q. So in my mind that makes a valuable employee. How about yours? Does that? A. To pose for pictures?

Q. Well, do modeling for advertisement, helping out in Woodmere shortly before, doesn't that make for a pretty valuable employee, three and a half years of experience? A. Well, when you look at the picture you can't see this as a valuable employee.

* * * * *

Q. What about Paulette Anderson, wasn't she a valuable employee? A. Just like anybody else.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Monat) Did any other employees ever model except Paulette Anderson? A. Yes. Do you want the names?

Q. If you can give us some other examples. A. Anu

995 Parling, Linda McGill, Michele Davis, Marie Bastinto, Janice Scardona, Alicia Grasso. Quite a few others. I can't recall their names.

MR. MONAT: Could I have a minute, Your Honor?

Q. On March 25, Monday, had Paulette not brought in this piece of paper and still refused to go to Madison would we have fired her? A. Yes, we would have.

Q. Without regard to any piece of paper? A. We would have fired her.

* * * * *

996 JOAN SEGAL

was called as a witness and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat)

MR. MONAT: Your Honor, in terms of sequence I would have preferred to call John Wilton but evidently he is rather ill.

I would like to mark this document.

(Document marked Respondent's Exhibit 14 for identification, of this date.)

Q. Identify yourself for the record. A. Joan Segal, 295 Arthur Street in Freeport.

Q. Mrs. Segal, what is your position with Jack LaLanne?
A. I'm the payroll bookkeeper.

Q. You work --

JUDGE MALLER: What?

THE WITNESS: Bookkeeper. I do the payroll.

Q. You work at the main office at Lake Success?
A. Right.

Q. I would like you to look at Respondent's Exhibit 14 and tell us what the dates along the top row indicate?

MR. MONAT: Could we go off the record?

997 JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Q. There are dates along the top column going horizontally. What do those dates indicate? A. That is the week ending from January, '73 to June of '74.

Q. The payroll ending -- A. Right, week by week.

Q. And you put those dates in there? A. Yes.

Q. What is down the right-hand column where you see names? What are those names? A. Those are male instructors at Little Neck, full and part-time.

Q. Does that include Mr. Bieler and Mr. Wolf? A. Yes.

Q. What are these numbers? Each name has an N after it and an A. What is the N and what is the A? A. The N is the normal work week schedule and the A is the actual work week worked.

Q. What records was this document made up from? Did you use certain records to make this up? A. I used the weekly payroll sheets.

Q. So you made this up from your payroll records?

998 A. Right.

Q. Did you personally fill in all the information on this sheet? A. Yes.

Q. What do all these numbers represent that are filled in in the boxes?

Take for example Bob Cash which is the second name in the left-hand column.

Next to N it has 18. What does this 18 indicate? A. That mean he was scheduled to work 18 hours that week.

Q. And what does the A indicate? A. It means that he worked 23 and a half. He actually worked that.

Q. Do we have a normal and an actual indication on our payroll records? A. Yes.

Q. To your knowledge is this accurate, this list? A. Yes.

Q. Were you reasonably careful in preparing it? A. Yes.

Q. There is a kind of a branch off on the bottom on the right-hand side. What is that? A. These are instructors that started in '74 that just didn't fit on the bottom. I just added them. Just an

999 extension.

JUDGE MALLER: Let me interrupt counsel.

Is this the record that she keeps in a normal course of business or was this prepared for this case?

THE WITNESS: This was prepared.

JUDGE MALLER: For this case?

THE WITNESS: Yes.

Q. Who asked you to prepare this? A. You did and Mr. Schwartz.

JUDGE MALLER: And this was taken from your actual records that you keep?

THE WITNESS: Yes.

JUDGE MALLER: You transcribed that information on these sheets?

THE WITNESS: Right.

MR. MONAT: I would like to offer the document in evidence and if counsel wishes to check against payrolls he is welcome to do so now and in the future.

I will show you the original, Mr. Blyer. It may be easier for you to look at it.

* * * * *

1001

16 Court Street,
Brooklyn, New York,
Thursday, August 15, 1974.

* * * * *

1003

JOHN WILTON

was called as a witness and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mr. Wilton, would you state your name and address for the record? A. John Wilton, W-i-l-t-o-n, 4750 Bedford Avenue, New York, New York 111235.

Q. Mr. Wilton, are you presently employed by Jack LaLanne? A. Yes, I am.

Q. What is your position? A. Madison, Madison Avenue, manager.

Q. Prior to that where did you work? A. Little Neck.

1004

Q. Were you manager at Little Neck? A. Yes, I was.

Q. What period of time? A. I was manager at Little Neck for roughly seven months.

Q. When did you cease being manager there? A. I cease being manager at Little Neck roughly one month ago.

Q. Now, just very briefly, what was your function at Little Neck as manager? A. Primary function is that of sales. Primary function as a manager, making sure that the sales aspect of the business is constantly kept up to par.

Q. Just what kind of things would you do in terms of sales? A. I would interview phone appointments about the coming new members. I would interview walk-ins. Walk-ins is a term used, people coming off the street without an appointment, and I would interview guests of members. A member would invite a guest and we would interview a guest.

Q. Are there any particular times of the day where it was particularly busy in terms of that function? A. Little Neck's peak hours were between I would say roughly 5:30 and 8. That was out peak hours.

1005 Q. In terms of your business was that the busiest -- A. That was our peak, that is when we were most busy at that one point in time.

Q. Do you recall an incident sometime in or around February or sometime in the winter of '74 there was some discussion concerning a calisthenic class that Mr. Kaufman had given? A. Yes, I do.

Q. Would you tell us where did this discussion or whatever was said take place? A. It took place right outside my door and my door is adjacent to the gym area, the main gym area at that time.

Q. Who do you recall was there, do you recall? A. To the best of my recollection it was myself, Richard Kaufman, I think Phil Matinelli was there. If my memory serves me correctly, a couple of instructress were there also.

Q. What do you recall being said, if anything? A. I remember asking Richie not to teach any more classes and someone mentioned -- I can't verify because I was calling the meeting. That is what I wanted to speak to the guys about, and somebody mentioned something about my job and I said yes, you know, we shouldn't have to jeopardize anything and they all laughed and said okay and we began the meeting.

1006 I think it was guest promotions, I don't know the extent of the meeting.

Q. On Monday, March 25th do you recall you were working that day? A. Yes, I was.

Q. Do you recall if you received any telephone call or spoke to Gabriele Schwartz on the phone? A. Yes, I do.

Q. Tell us about what time that was? A. It was in the afternoon.

MR. BLYER: Pardon me, is this March 25th?

MR. MONAT: Yes, 1974.

MR. BLYER: Thank you.

Q. Do you recall what she said to you at that time? A. Gabriele explained to me that Paulette Anderson may be coming to work at Little Neck that night and that she had been assigned to Madison Avenue as of that point and that she wasn't to work at Little Neck that evening.

Q. Did you get any notice later that evening that Paulette was at Little Neck? A. Yes, a receptionist who was on the front desk notified me.

Q. About what time, do you recall? A. I would say roughly 6:20 if my memory serves me right. That is what I had down.

1007 Q. What were you doing at that time? A. I was interviewing two walk-ins.

Q. Where were you doing that? A. In my office which is adjacent to the gym.

Q. How long were you with them? A. Almost an hour.

Q. What about after that? A. After that I had a guest come off the gym floor and as a matter of fact I had one guest and I had another guest to interview also at that time plus other things.

There were phone appointments in the lobby, et cetera, which I was delegating to the other salesmen.

Q. Were you making an effort to avoid seeing Paulette Anderson at that point? A. As a matter of fact, I was trying to expedite my interviews because I knew she was waiting.

Q. Was there anything unusual about the length that these interviews took? A. No, none whatsoever. Sometimes it will be much lenghier.

Q. About what time do you recall getting to speak to her? A. Roughly 8.

Q. Where did this occur? A. In my office.

1008 Q. Who was present at first? A. Myself, Paulette, and James -- I don't know his last name.

Q. What was said at that time? A. Well, I apologized to Paulette for keeping her waiting so long. She said she accepted it and I explained to her that she couldn't work at Little Neck that evening and that she had assigned to Madison Avenue.

Then Paulette produced a piece of paper and she asked me to read it and sign it and I read the piece of paper, and she told me she had been in the NLRB earlier in the day and she said preparing this document was perfectly legal, et cetera.

I called in Joan Holand to be my witness because Paulette had James as her witness, and Joan came into the office and I explained to Joan very quickly what had happened and what occurred and Joan read the document.

Joan pointed out that the document was wrong because the document stated that there was no longer any employment available for her at the Jack LaLanne Health Spas and Joan said that that was incorrect because there was no longer any employment at Little Neck but there was employment available at Madison Avenue.

So I amended it, I crossed out and initialed it and I signed it, Paulette, Joan and James.

1009 Q. I show you Respondent's Exhibit No. 7 and ask you if you recognize your signature on that document? A. Yes, I do.

Q. Did you understand her to be permanently transferred to Madison Avenue? A. No, I didn't.

MR. BLYER: The answer was what?

THE WITNESS: No, I didn't.

MR. MONAT: I would like to mark as Exhibit No. 15 this document.

(Document marked Respondent's Exhibit No. 15 for identification, of this date.)

Q. Do you recognize this document?

I would like the record to note there is a card attached.

A. Yes, I do.

Q. How did you get that document? A. I asked Paulette to give me a copy. Paulette gave me this copy and the only reason I attached the card to it, what I had crossed out and written didn't come through on the carbon.

Q. So she had a carbon prepared? A. She had a carbon made out when she came in.

Q. Did you talk to Gabriele Schwartz after this meeting
1010 where Joan Holand and Paulette Anderson were there?
A. Yes, I did.

Q. When was that? A. That was later on that evening. I don't know the exact time.

Q. What did you say to her? A. I explained that Paulette had showed up and I explained I had been busy and I didn't get to talk to her until about 8 o'clock in the evening, and that I explained to her what I outlined earlier in the conversation.

I told Gabriele that Paulette had a document and Gabriele questioned why I signed it and I said I had read the document and Paulette she had explained she had gone to the NLRB and they said that preparing the document was not an invalid act and I said that I amended the document to read that there was no more employment available at the Little Neck branch and she was going to be assigned, temporarily assigned to Madison Avenue.

I told Gabriele that I had a copy of it and that I crossed it out and Joan had signed it and myself, Paulette and James and that I would forward a copy of the letter to her immediately.

Q. Did you do so? A. I did the next day, I sent the document.

1011 MR. MONAT: I would like to offer the copy in evidence.

MR. BLYER: I would like to know the purpose of it, Your Honor. We have the original in evidence. Why do you need the copy in evidence?

MR. MONAT: Well, this is a copy that was given to Mr. Wilton. I think it is relevant to the total circumstances.

JUDGE MALLER: This is a copy of which Respondent's Exhibit?

MR. MONAT: No. 15, Your Honor.

Oh, the original?

MR. BLYER: 7.

MR. MONAT: 7, yes.

JUDGE MALLER: Isn't 7 the same as 15?

MR. MONAT: Yes, except I want the record to be clear there was a copy already prepared and Mr. Wilton wrote out a little note on the card attached.

JUDGE MALLER: Well, there is no harm in it. I will receive it in evidence.

(Respondent's Exhibit 15 for identification received in evidence, of this date.)

MR. MONAT: No further questions.

JUDGE MALLER: You may cross-examine.

CROSS EXAMINATION

1012 Q. (By Mr. Blyer) This conversation in the winter of '74, can you place the month, Mr. Wilton? A. Perhaps February, January, I really don't know. I used to call meetings all the time, so for me to pick out one specific meeting is difficult.

Q. This was a meeting that you called? A. Well, it was prior to going to have a meeting, just prior to it.

Q. Do you say Mr. Isgro was present at the meeting?

A. I said to the best of my recollection.

Q. Who else do you think was present during that meeting?

A. Myself, Phil Matinelli, Richard Kaufman. I believe Larry Moskowitz, perhaps Al Romeo.

Q. You said you told Richie not to teach anymore calisthenic classes? A. Yes.

Q. What was said after that by you? A. Someone --

Q. No, by you. A. By me?

Q. Yes. A. There was a prelude to what I said and I just said yes, we don't want to cause any trouble or something along those lines. I can't remember the exact terminology.

1013 Q. Did anyone else say anything? A. There was quite a bit of conversation going on between the fellows.

Q. What else was said and if you can identify who said it please do that. A. I just said to Richie, Richard Kaufman, I said, "Rich, do me a favor, don't teach anymore classes," and then in the background, if my memory serves me right, this is from memory, Larry Moskowitz said something under his breath about my job.

And I said, "Yeah, do me a favor," and then there was some more small conversation which I can't really remember and then we went into our, you know, our little meeting that I was going to have.

Q. Oh, so it wasn't you who said, "Don't teach any more classes, Richie, it will jeopardize my job?" It wasn't you? A. I said not to teach anymore classes and somebody else mentioned about my job and I agreed with it.

Q. Richie taught calisthenics classes prior to that, hadn't he? A. Yes, he had.

Q. And the quality of his classes were good, weren't they? A. As far as I knew, yes.

Q. Do you know anything wrong about the way he taught
1014 those classes? A. Did I know anything wrong about them?

Q. Yes. A. Difficult for me to answer that because the only way I would know by members coming back to me.

Q. Did anyone ever tell you he taught lousy classes? A. There are pros and cons to everybody. Some people said he gave classes too hard, some people said it was great.

Q. Now, let us go to March 25th of 1974. Gabriele Schwinner told you that prior to Paulette coming to work that evening she was not to be allowed to work at Little Neck that evening? A. That is correct.

Q. Did she give you any other instructions? A. She told me to give Paulette the opportunity to go to Madison Avenue one more time, she had been assigned to Madison Avenue and she wasn't to work at Little Neck that evening.

Q. And that was it? A. That was about the extent of it.

Q. Did she tell you what to do if she refused to go to Madison? A. No, she didn't.

1015 Q. Did you understand what you were supposed to do if she didn't go to Madison? A. Did I understand?

Q. Yes. A. I assumed that if Paulette wasn't going to Madison, all right, that she would be terminated herself or we would be actually terminating Paulette's employment at the company.

Q. Oh, but you are saying that eventually you would have terminated her; is that it? A. If she hadn't gone to Madison Avenue, yes, we would have had no alternative.

* * * * *

1017 Q. Did you read the second sentence, which said her employment is to be terminated as of Monday, March 25, 1974? A. Yes, I did.

Q. You signed that document? A. Yes, I did.

Q. Now, if you had been given no instructions and you had no understanding that she was to be terminated, if she refused or

if she did not offer to go to Madison why did you sign that document terminating her? A. As I read the document it wasn't terminating her at the company. I amended it to terminate her work at the Jack LaLanne Little Neck branch. If you read the entire document and not just one sentence you will see I am terminating Paulette's employment, not employment terminating but the employment is being terminated at the Little Neck Branch because that is what it implied by the amendment made by myself.

Q. Not at all. Let me read it to you:

(Reading.)

This is to inform Paulette Anderson residing at 265 Graff Avenue, Bronx, New York that her services at the Jack LaLanne Club at Little Neck are not longer needed. Her employment is therefore terminated as of Monday, March, 25, 1974.

THE WITNESS: That is correct. I employed people at the

1018 Little Neck branch. I terminate people at the Little Neck branch and hire people at the Little Neck branch necessarily. I have nothing to do with Madison Avenue or one of the other clubs. I am manager of one club.

Q. If you were so careful to put it at Little Neck no longer needed why did you say her employment is to be terminated as of March 25, 1974 at Little Neck --

MR. MONAT: Objection.

MR. BLYER: I finish my question.

MR. MONAT: I object.

JUDGE MALLER: Your question is argumentative, Counsel.

Q. Why was it necessary at all to put in that second sentence? Didn't you think the first sentence made it clear enough that her

services were no longer needed at the Jack LaLanne Health Spa Little Neck?

Didn't that suffice?

MR. MONAT: I object.

A. The document was also produced.

JUDGE MALLER: Overruled.

Q. Pardon me? A. The document was already produced when Paulette walked in.

Q. You had no problem revising part of it. Why couldn't you revise the second sentence and cross it out? A. Obviously I felt it wasn't necessary.

1019

Q. You never told her she was fired before she produced that document, that is your testimony? A. This is just from memory because it was March 25. I didn't consider that a large incident. Paulette may have asked me now, this is only from memory, she may have asked me was she fired, and to be perfectly honest I don't know if she asked that question but my response would have been negative, she wasn't fired.

Q. So as far as you were concerned then at the end when Paulette Anderson left the room, your office on March 25th she had only been terminated at the Jack LaLanne Health Sap in Little Neck? A. That is correct but I also assume that Gabriele would have had no alternative but to terminate her.

Q. Do you remember during the course of this conversation speaking to her about a three-day notice? A. Do I remember speaking to her about a three-day notice?

Q. Yes. A. Beginning of the conversation I just remember telling her I was giving her another opportunity to be transferred to Madison Avenue. I remember Gabriele --

Q. No, no, in this conversation do you remember talking
1020 to her about a three day notice? A. No, I don't.

Q. What do we mean when I refer to a three day notice?
A. Three day notice in the format that I think you are meaning it, that we were to give people, staff personnel, instructors and instructresses, et cetera, a three day notice prior to moving them to a different club or things of that nature.

Q. Prior to any discharge; isn't that correct? A. Well, I didn't understand it to be that because if someone committed a large enough infraction we would terminate them as necessary.

Q. Don't you remember talking with Paulette Anderson over the fact that you sort of agreed with her that management had not given her the proper three day notice? A. Truthfully I don't remember it.

Q. Two weeks later Paulette Anderson came back, is that correct, to pick up her pay? A. Right.

Q. You were there? A. Yes.

Q. Joan Holland was there? A. Right.

Q. Will you tell us what happened on that occasion?
A. Paulette came in I think to pick up her check, et cetera, and
1021 turn in her uniforms, and we have certain forms that we fill out when someone is terminating saying they are returning their uniforms, et cetera, and their name tags and also that we are giving them the check and there is no money due them, et cetera. That took place between Paulette and Joan Holland, to the best of my recollection.

Q. You took back her uniform, is that correct? A. I didn't personally.

Q. Someone did on this occasion, you or Joan? A. Joan.

* * * * *

1023 A. Well, that is standard company procedure.

Q. Were you also present when a second document was given by Joan Holland to Paulette Anderson to the effect that she had left on her own accord? A. I was there, yes, I was.

Q. Do you remember Paulette Anderson refusing to sign that? A. I certainly do.

Q. Do you remember what Joan Holland told her? A. No, I remember Paulette stating, "Joan, I can't sign this, it isn't true," and I just remember Joan somehow agreeing with her, I don't remember what the terms were.

1024 Q. Do you remember Joan saying, "Oh, Paulette, we are sorry, that doesn't apply to you?" A. Do I remember her saying that?

Q. Yes. A. No, I don't. As I said I wasn't an important part of that conversation.

Q. Do you remember what Paulette said? A. I just remember Paulette stating that she felt, you know, "I can't sign that."

Q. Did she say why? A. She said, "I feel it is untrue."

Q. Did she say anything else? A. I believe she said something like -- I have to use my own words because I can't remember what she said.

Q. Go ahead. A. I believe she said something like, "They try even up to the end," that is my own terminology, I don't remember exactly what Paulette said.

Q. That piece of paper that you asked her to sign that says something to the effect that she had left on her own accord, isn't that correct, something like that the paper said? A. I had nothing to do with the preparation of those documents. I hadn't read them.

1025 As far as I knew Paulette was turning in the uniform and picking up her check, standard company procedure. It is a folder, document. I knew nothing about what was in the document. This is standard company policy.

A person turns in their uniforms to get the last check.

Q. Is it not standard also to give them a second document to the effect she left on her own accord when a person leaves the company's business? A. That I believe -- that document is also in with those other documents. There are numerous documents.

Q. You think that is one of them? A. Yes, I do.

Q. For all people who leave, no matter what the reason is? A. Yes, I do.

Q. If you didn't tell Paulette Anderson on the 25th of March that she was fired what did you understand that she was doing when she handed you this document --

MR. MONAT: I object.

Q. (Continuing) Respondent's Exhibit 7.

JUDGE MALLER: Overruled.

A. When Paulette gave me the document, from reading it I assumed that she was in effect refusing to go to Madison Avenue, and in refusing to go to Madison Avenue, since we had a need for personnel

1026 at Madison Avenue, she was terminating.

There was no alternative, I imagine, for Gabriele to terminate her employment with the company because we needed help at Madison Avenue and we did need her services, and didn't need her services at Little Neck at that time.

* * * * *

Q. Do you think she was leaving on her own accord at that

1027 point by handing you this piece of paper? A. I thought perhaps

by preparing the document in advance, having two copies made and presenting it to me, to a small degree she was, when you are saying terminating herself, no, but I feel that perhaps we were being coerced into terminating her because she was saying, "Look, I'm terminated, this is a document I prepared. You sign it stating that I terminated myself." That is why I amended it to the Little Neck branch.

Q. So you understood she was terminating herself? A. No, I did not say that. This is what you are construing from my conversation.

I stated that to a degree Paulette had already had the document prepared, came into see me. The document was indicative that she wasn't going to work at Madison Avenue and because she wasn't going to work at Madison Avenue she gave Gabriele no other alternative but to terminate her employment because we needed assistance at Madison Avenue as far as I know.

* * * * *

1029 REDIRECT EXAMINATION

Q. (By Mr. Monat) I think you indicated on cross-examination that on the winter incident with Kaufman and Matinelli just before your general meeting you agreed with somebody saying something about your job.

Tell us exactly what you said that would indicate your agreement, what you said, how you said it. A. As I said, I said to Richard, "Do me a favor and don't give any more classes, Rich," and then there was some kibbitzing around, I can't remember who said what, who stated, what was exactly said, but someone mentioned something about my job and I said, yes, I agree, let us not get me in trouble or something along those lines. I can't remember the exact terms.

Q. Did you seriously believe that it would mean your job if Mr. Kaufman gave classes? A. No. Did I feel that? No.

Q. How would you describe your comment in response to what someone said? How would you characterize it? A. Friendly agreement.

MR. MONAT: Nothing further.

JUDGE MALLER: Mr. Wilton, when you asked Mr. Kaufman or directed him not to teach anymore classes did you tell him why?

THE WITNESS: No, I didn't.

1030 JUDGE MALLER: Why did you direct him not to teach any more classes?

THE WITNESS: I had walked into the gym and I heard that Richard had given a class and I had been instructed from -- I have nothing to do with scheduling classes, I was instructed that Richard had no more classes and I just said to him, "Do me a favor, don't teach anymore classes."

JUDGE MALLER: Who instructed you that he had no more classes?

THE WITNESS: Andy Bostinto. First Steven Wolf who was the floor manager.

JUDGE MALLER: Why would it get you into trouble if he gave the classes?

THE WITNESS: It wouldn't. One of my other functions as a manager is during this period of time when there was upheaval, trying to keep the guys' spirits up and an esprit de corps function, and I would kibbitz with them and try to be as amiable as I could. I had to continue the crew functioning.

JUDGE MALLER: What do you refer to as the upheaval?

THE WITNESS: Upheaval meaning some of the employees' attitudes, et cetera, all the different factors that went on prior to this.

JUDGE MALLER: Specifically what did you have reference to?

1031 THE WITNESS: I'm not referring to one specific item. I'm referring to attitudes towards the job, et cetera. Things of that nature. I wanted everybody to work to the utmost of their ability and to be as congenial as possible, as friendly as possible, promote as much --

JUDGE MALLER: Don't they always do that?

THE WITNESS: In a business such as ours it fluctuates.

JUDGE MALLER: Was there any particular thing that this time caused any upheaval as you refer to it?

THE WITNESS: Well, Richie wasn't too delighted about having his classes out.

JUDGE MALLER: His classes had been cut ahead of time?

THE WITNESS: Not all of them.

JUDGE MALLER: But some had been cut?

THE WITNESS: Richie obviously liked giving classes.

JUDGE MALLER: Were you informed by Mr. Wolf or Mr. Bostinto that he was not to give any more classes?

THE WITNESS: At that point. As I said I had nothing to do with scheduling.

JUDGE MALLER: You didn't know why?

THE WITNESS: No.

JUDGE MALLER: Nobody told you why?

THE WITNESS: No.

1032 JUDGE MALLER: With regard to Ms. Anderson, I believe you stated in your direct testimony that when Ms. Anderson refused to transfer to Madison Avenue that you assumed she would be terminated.

What was that assumption based on?

THE WITNESS: If I was told to work on Madison Avenue and I said I'm not going but staying at Little Neck, I would be terminated. That is why I assume that.

JUDGE MALLER: That is based on company policy?

THE WITNESS: Yes, if they need you somewhere and you refuse to go, well then the company feels, I imagine, that if you can't go where you are needed at the time that you are needed --

JUDGE MALLER: Did anybody tell you that she would be terminated if she did not go to Madison Avenue?

THE WITNESS: In my conversation earlier with Gabriele during that day on March 25th, Monday, during the day Gabriele indicated that if she refused to go to Madison Avenue we would have no alternative.

JUDGE MALLER: But to terminate her?

THE WITNESS: To terminate her.

* * * * *

1033 JOHN WILTON

* * * * *

1036 FURTHER REDIRECT EXAMINATION

Q. (By Mr. Monat) So, Mr. Wilton, you went to the Executive Club before you went to Madison? A. That is correct.

Q. About how long were you at the Executive Club? A. Oh, week and a half.

Q. The Executive Club is downtown Manhattan? A. Woolworth Building, right across from City Hall.

* * * * *

MR. MONAT: Your Honor, I understand there won't be any objection to Respondent's Exhibit No. 14 in evidence. The only ex-

1037 planation we have is that where there is a long series of blanks for the end column, the normal column, it means this was just no listing on the payroll record for normal.

In addition, it turned out that October 12th, the week ending October 12th was omitted when Mrs. Segal originally prepared it.

I believe that was inadvertent. And we have filled it in in the very last column. That is 10/12/73, but it follows the whole period ending in June of '74.

JUDGE MALLER: Is that any objection?

MR. BLYER: No, Your Honor.

One other point I think should be made. As Mr. Monat pointed out sometimes the column labeled N stops. There are no numbers in it and there is nothing in the worksheet with regard to an individual being scheduled for normal hours. But sometimes both of them stop, the N and the Z and, of course, that would mean that the individual was no longer working for the company.

MR. MONAT: Was no longer working there at that location.

MR. BLYER: Sometimes you will find in the midst of a longer series of hours that a person worked blank, so, for example --

JUDGE MALLER: That means he didn't work this pay period.

1038 MR. MONAT: It would indicate vacation most likely or some other similar event.

MR. BLYER: Or it could have been a transfer.

MR. MONAT: Might not be vacation but he probably didn't work there that week.

MR. BLYER: Could be a transfer to another place also.

MR. MONAT: Could be. I don't really know the reasons. We have to check it if it becomes important.

JUDGE MALLER: You say there are here instances where there is a blank for N but right beneath it the A shows hours? That means although the employee was not scheduled to work he actually did work.

MR. MONAT: No, no, just means there was nothing filled in in the normal column.

JUDGE MALLER: Why is that?

MR. MONAT: I don't know the reason.

MR. HARRY SCHWARTZ: I think I can answer that because I asked Steve just now.

MR. MONAT: I would like to talk to him before we find out.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

There being no objection Respondent's Exhibit 14 is received in evidence.

1039 (Respondent's Exhibit 14 for identification received in evidence, of this date.)

MR. MONAT: I call Steven Wolf.

Whereupon,

STEVEN WOLF

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Q. State your name and address, please. A. Steven Wolf.

JUDGE MALLER: How do you spell your first name?

THE WITNESS: S-t-e-v-e-n, W-o-l-f. 219-51 75th Avenue, Bayside, New York.

Q. Mr. Wolf, are you presently employed by Jack LaLanne? A. Yes, I am.

Q. Where is that? A. In the Little Neck branch.

Q. How long have you been employed at that branch? A. A year and a half.

Q. What were you initially employed as? A. An instructor.

Q. Then did that position change? A. Yes.

Q. Do you know about when? A. Approximately February, 1973.

1040 Q. How long were you assistant floor manager? A. Until March, 1974, I believe.

Q. Then what happened?

JUDGE MALLER: I assume he became an assistant floor manager in February '74?

MR. MONAT: '73.

JUDGE MALLER: Assistant floor manager in '73, all right. When did you become a floor manager?

THE WITNESS: Approximately March, '74.

JUDGE MALLER: March what?

THE WITNESS: '74.

Q. Were you involved in the initial union organizational campaign at all? A. Yes, I was.

Q. Just very briefly, tell us what that involvement was. A. Well, I was one of the original card signers back in June, I think it was June 5th, and I was involved in testifying for the union during the cases last summer.

Q. Were you called as a witness by General Counsel? A. Yes.

Q. Was that in the November hearing, do you recall? A. Yes, it was.

Q. Just generally first, what were the duties of yourself

1041 and Mr. Bieler, just generally? A. Well, we were more or less in charge of the gym. We assigned duties to the instructors

as far as taking members around, supervising members, keeping the gym clean, assigning cleaning duties, making out payroll.

JUDGE MALLER: What period of time are we referring to? What was Mr. Bieler's position?

MR. MONAT: He was a floor manager, I believe.

JUDGE MALLER: What time are we referring to?

MR. MONAT: During the period that one of the duties generally of an assistant floor manager --

JUDGE MALLER: Duties of an assistant floor manager.

MR. MONAT: And a floor manager. I think the question was answered.

JUDGE MALLER: That is all right.

Q. Do you know when Mr. Bieler left the employ of the company? A. Yes, it was right after Christmas.

Q. Did you --

JUDGE MALLER: What year?

THE WITNESS: '73.

Q. When he left did you become floor manager? A. No.

Q. Who did? Who came in as floor manager? A. Ray Ramos.

1042 Q. In Approximately the latter part of 1973 did you observe the work performance of Mr. Bieler at all? A. Yes, I did.

Q. Incidentally, was Bieler active for the union at all at anytime? A. Yes, he was.

Q. In which sense? A. He was also a card signer and he testified in the November hearings.

Q. Was he involved, do you know, in giving out any cards or anything like that for the union? A. Yes, he did. I believe so.

Q. When was that, approximately? A. That was back in June of '73.

Q. Tell us what you observed about Mr. Bieler's performance and approximately when. A. Well --

* * * * *

1043 A. Well, in November of '73 it seemed like Mr. Bieler had lost interest in his job. He was failing to carry out his responsibilities as a floor manager.

He wasn't really supervising the men and he had even said to me at one point that he wasn't really that interested in the job, he

1044 was just there to collect his money and he wasn't really -- he didn't really care about what happened.

Q. Did Bieler's performance as you describe it have any effect on what you then did in terms of your job as assistant floor manager? A. Yes. Well, I had to take it upon myself to more or less fill in where he left off. I was supervising the men where he should have been. I was making out the reports that he should be making out and I was more or less running the gym instead of him.

Q. Do you recall an incident about November 13, 1973 involving Mr. Kaufman in terms of cleaning or any other matters? A. Yes, I believe so. I think it was one night that it was approximately 9, 9:30 at night, and at this time we usually have the instructors clean the gym up, vacuum up, clean up leather and chrome and everything, and I told Mr. Kaufman that he should vacuum the track area.

And five, ten minutes went by and it wasn't done yet and I went over and said to him, I said, "Are you going to vacuum the track?" And he said, "Yes, I'm going to do it."

As the night went on, approximately, oh, 9:30, quarter to 10 the instructors had already left and the manager who at this time I

1045 believe was Richard Orenstein came in and he checked the gym over and the track area was filthy and it wasn't vacuumed.

He said to me, "Who was supposed to vacuum the track?" And I told him Mr. Kaufman and it turned out that it wasn't done at all that night.

MR. MONAT: I would like to mark a document as Respondent's Exhibit 16, I believe.

(Document marked Respondent's Exhibit No. 16 for identification, of this date.)

Q. Would you identify that document, Mr. Wolf? A. This is a warning notice that I gave to Richard Kaufman.

Q. Who filled out the notice? A. This was filled out by Barry Flickstein.

Q. Did you sign it? A. Yes, I did.

Q. There are some notations at the bottom, "Refused." Do you know how that came about? A. Yes, when I showed this to Richard Kaufman and asked him to sign it he refused to sign it, which was on the 27th of November, so I wrote down the time and the date.

Q. Do you recall any other kinds of problems you had with Mr. Kaufman? A. Yes. Well, in November it seemed that his attitude towards the job had changed. He wasn't carrying out his duties.

1046 Members weren't being serviced. He was holding private conversations on the gym floor with other instructors after repeatedly being warned not to, told not to, and he wasn't following through with his cleaning duties and the gym was more or less run down because these things were not being carried out the way they should have been.

MR. MONAT: I would like to mark a document as Exhibit 17 and another set of documents consisting of six pages as No. 18.

(Document marked Respondent's Exhibit 17 for identification of this date.)

(Series of documents marked respectively Respondent's Exhibits 18A through 18F for identification, of this date.)

Q. With respect to No. 17, did you fill out that document, Mr. Wolf? A. Yes, I did.

Q. Would you identify what are these exhibits numbered 18 for identification? A. These are the daily sign-in sheets for the employees at the Little Neck branch.

Q. What days are they for? A. November 17th, 24th, 25th, 28th and 29th and December 1st.

Q. Why was the document, Exhibit No. 17, given to Mr.

1047 Kaufman?

JUDGE MALLER: He didn't testify that it was.

Q. Did there come a time when you gave that document or spoke to Mr. Kaufman in reference to that document? A. Yes, I did.

Q. When was that, do you know? A. I gave this to him on the 12th of December, '73.

Q. Why did you give it to him? A. I'm sorry, it is the 11th of December.

Q. Why? A. Because he had failed to sign out on numerous occasions on this sign-in sheet which --

Q. Would you point out when he had failed to sign out? A. Yes, on the 17th of December.

MR. BLYER: The 17th of what?

THE WITNESS: December. The 25th.

Q. Did you say December or November do you mean? A. I'm sorry, November, November. The 25th of November, the 29th and the 1st of December.

Q. On the warning notice did you write in the dates that he didn't sign in? A. Yes.

Q. Do you know if you made any error in any of the dates
1048 on the warning notice A. Yes, I did. I believe I made a mistake by writing November 28th instead of November 25th.

Q. And we have both November 25th and November 28th time sheets included, the sign-in sheets? A. Yes, we do.

Q. When you spoke to Mr. Kaufman about this what was said? A. When I gave him this paper?

Q. Yes. A. I handed him this paper and I said, I explained --

JUDGE MALLER: By the paper you are talking about --

THE WITNESS: This warning notice.

JUDGE MALLER: 17th?

THE WITNESS: Yes, Exhibit 17.

I explained to him that he had failed to sign out on these dates and I was giving him this notice because it had been explained to him before that he had to sign out and he had been repeatedly told and he still failed to sign out, so I was giving him this notice.

Q. Would you refer to Exhibit 18B? You see Mr. Kaufman's name on there?

MR. BLYER: Do you have copies of that, Mr. Monat?

MR. MONAT: I will give it to you.

Q. You see Mr. Kaufman's name on there? A. Yes, I do.

1049 Q. Are your initials on there anywhere? A. Yes, it is.

Q. Would you point out where it is? A. It is right next to -- (indicating).

Q. How did it happen that you put your initials there that time? A. On this Saturday afternoon it was already past six o'clock and I had come out to just take a look at the time sheets and I noticed that Richard Kaufman hadn't signed out and he was in the health bar and I took the sheets in the health bar and I showed it to him and

said, "You got to sign out on these sheets. It is very important for records and payroll and everything else." I signed it out right there for him and I initialed it.

Q. Subsequent to November did you have any further problems with Mr. Kaufman in terms of work? A. Yes, from November through December, January, February and I was still having trouble as far as having him perform his duties.

Q. In which respects? A. Well, members were not being serviced. He wasn't carrying out his cleaning duties.

At various times he would disappear off the floor without notifying the floor manager and this continued.

Q. Did you give him anymore warning notices? A. No, I didn't.

1050 Q. Why not? A. Well, because I had already given him two and in our company the rule is that after the third warning notice it is grounds for termination and I didn't want to terminate him. I thought that giving him the first two would more or less, you know, change things and he would more or less realize that he had to get on the ball.

Q. Did he change? A. No.

Q. Do you recall taking a vacation in the winter of 1974? A. Yes, I do.

Q. Do you know what period of time you took that vacation? A. I left the night of the 7th, February 7th.

Q. How long were you gone? A. Approximately 10 days, 9 days.

Q. Do you recall speaking to Mr. Harry Schwartz at any time prior to February 7th? A. Yes, I do, approximately a week before.

Q. How did that conversation come about? A. I had met Mr. Schwartz in the health bar in Little Neck and you know, we said hello and we were speaking and he asked me how is everything going, how is the floor running, and I said to him everything was running fairly well.

1051 He said, "Why don't you come inside," you know, "Come in and sit down."

I walked into his office and we sat down and talked for a while and he said, "Are you having any problems at all on the floor, anyone give you any trouble?"

I had mentioned I had trouble with Richard Kaufman. It seemed like I couldn't get him to perform his duties and I was having problems carrying out my job because he was a hindrance.

He asked me well, had I got in touch with my supervisor who was Mr. Bostinto and I said, no, I hadn't.

So he said, "Why don't you get in touch with Mr. Bostinto if you can or leave him a note or something that you want to speak with him."

That was more or less the end of the conversation.

MR. MONAT: Mark another document as Respondent's Exhibit 19.

(Document marked Respondent's Exhibit No. 19 for identification, of this date.)

Q. I show you that document, Mr. Wolf, do you know who wrote that document? A. Yes.

JUDGE MALLER: You are referring to Exhibit 19?

MR. MONAT: Yes.

1052 Q. Who? A. I wrote this.

Q. Did you write all of it? A. Yes, I did.

Q. You signed it? A. Yes, I did.

Q. What day, do you recall, when you wrote that and where? A. I wrote this on February 7. That was also the day I was leaving for vacation, in one of the sales offices in the Little Neck branch.

Q. Then what did you do with it? A. I brought the letter into the office which was adjacent to the Little Neck branch and I was going to put it into Mr. Bostinto's mailbox.

At the time I walked into the office I met Mr. Schwartz and he asked me what I was doing in there and I said I had a letter for Mr. Bostinto, I was leaving on vacation, I wanted to leave it in his box because I couldn't get in touch with him and he said he would see that he got it.

Q. So you gave it to him? A. To Mr. Schwartz.

Q. Prior to the letter and the conversation you had with Mr. Schwartz the week before February 7th had you had any discussions with him or anyone else about, any other management person,

1053 about Mr. Kaufman? A. Yes, I had spoken to Mr. Bostinto about Richard Kaufman.

Q. What had you told Mr. Bostinto, do you recall? A. I had explained to him that I was having difficulties with him on the floor, the work wasn't being done. It seemed like there was a resentment from Mr. Kaufman towards me from taking orders, that I had asked him to do something and he would make a face or he would just say yeah, yeah and walk away, and it turned out it wouldn't get done.

MR. BLYER: Your Honor, could I have the question read back, please.

(Whereupon the last question was read by the reporter.)

JUDGE MALLER: Is this what you told Mr. Bostinto?

THE WITNESS: Yes.

Q. Now, when you came back from vacation -- when did you come back do you know? A. It was approximately ten days later on a Monday. Whatever day of the week.

Q. Were you told anything by anybody with reference to anything you had said in the letter? A. Would you repeat that?

Q. Did anybody speak to you about what you asked for in that letter? A. Yes. Well, when I came back I spoke to Mr.

1054 Bostinto and I asked him if anything was being done about it. He said he spoke to Mr. Schwartz and that I would just have to live with him.

Q. Have you been here and heard the testimony about Mr. Kaufman's calisthenics classes being reduced and eliminated? A. Yes.

Q. Do you recall whether they were eliminated all at once or reduced over any period of time? A. Well, it wasn't all at once. It was over a period of time.

Q. There has been testimony that he went from floor classes to none all in one day. Do you recall whether that happened? A. No.

Q. Did there come a time when he didn't do anymore classes? A. Yes.

Q. About when was that? A. I think it was the end of February, the beginning of March, somewhere around there.

Q. Do you know the reasons why his calisthenics classes were stopped? A. Well, we had been having him teach the classes and at the time of me having trouble with him on the gym floor

1055 and seeing that his attitude had changed and there were also rumors going around the club that he possibly might be leaving or quitting, we felt we might be left shorthanded if at the time he was

the only person giving classes, so we had someone else come in and teach some of his classes.

JUDGE MALLER: Who is we?

THE WITNESS: Management.

JUDGE MALLER: Who specifically. You said you and somebody else.

THE WITNESS: Mr. Bostinto and I.

JUDGE MALLER: In other words, you discussed it?

THE WITNESS: Yes.

JUDGE MALLER: These were the considerations?

THE WITNESS: Excuse me?

JUDGE MALLER: These were the considerations you expressed in a conversation?

THE WITNESS: Yes.

Q. Do you recall any other considerations at that time? When are you talking about? What period of time now? A. This was in February, I suppose around February.

Q. Do you recall Ray Ramos coming into the gym?

A. Yes.

Q. Was there any correspondence between his coming to

1056 the gym and the reduction or elimination of Mr. Kaufman's hours?

A. Yes, when Ray Ramos came and took over as floor manager he took over some of Mr. Kaufman's classes because he had -- Mr. Ramos had been giving classes for quite a long time and he was known for giving a very good class, but at the same time we usually had a floor manager give classes in order to familiarize himself with the members, being a new person to the club.

Q. What other facts at any point led to the reduction or elimination of Mr. Kaufman's classes? You mentioned something

about rumors of quitting or something like that. Anything else? A. Well, the fact that his attitude towards the job had been so poor and his responsibilities weren't being carried out it seemed like he wouldn't be able to carry out the classes as well or give as good a performance as someone else might have who had an interest in the job.

Q. I would like you to refer to this document that is Respondent's Exhibit No. 14 in evidence and refer to the period of about February 8th, 15th or thereabouts, this period of time, February 22nd.

There are certain reductions in hours there? A. At around the 22nd.

Q. Do you know --

MR. BLYER: I'm sorry, I didn't hear that.

1057 JUDGE MALLER: He said around the 22nd.

Q. Mr. Kaufman's hours appear to be affected at that point. Do you know why that was so at that point? A. Yes.

Q. Tell us how that came about. A. At around the 22nd of February we realized that the Little Neck spa had been overstaffed. There were too many instructors on for the working hours that were assigned and at the same time we had to cut hours back just for the economics, that we didn't need these people on.

Now, certain hours had to be cut back, were taken away. The hours that had to be cut back were being worked mostly by an instructor we had working full time who was Glenn Tausak, and in order to keep Glenn Tausak as a full time instructor and to keep his hours up when we took these hours away that weren't needed in the gym we had to replace them, so the way we replaced Mr. Tausak's hours was to take them away from the part timers, being that a full timer was more important.

We would rather have him and keep his full hours at the part timer's expense.

Q. Why is that? Will you just explain that a little more.
A. Yes, we would.

1058 Q. You say you would give the full timers certain hours. Why do you give the full timers certain hours? A. We would give the full timers more hours because the full timer was much more valuable to us.

He was usually a more dependable person. He wasn't like a part timer or going to school, coming into make a little extra money. He had a real interest in the job. He was more valuable. He had a better knowledge of the company, much more dependent.

Q. How would you decide whose hours would be affected, which part timers? A. Well, I just took wherever the hours could come from. In other words, in order to make up Mr. Tausak's hours I took hours from the part timers but I at the same time cut them down evenly so everyone was left with approximately the same amount of hours.

Q. Mr. Kaufman was affected. Why was that, what factors did you consider? A. Well, I had to take into consideration at the time Mr. Kaufman's performance in the gym and his attitude at the time which wasn't too good, and I would rather have someone working those hours who was more dependable and more willing to work.

At the time Mr. Kaufman seemed to have been slackening
1059 down on his duties and he wasn't performing at his capacity.

Q. Did you discuss the matter of reducing hours at that time with anyone in terms of any management personnel? A. Yes, Mr. Bostinto.

Q. What was the discussion? A. Well, we realized that the hours of the gym had to be cut and the hours that were going to be cut were Mr. Tausak's hours, being that he was working at the time, that we did need someone on and we realized you had to take hours from the part timers in order to make up his schedule.

At the same time we were also going to take the hours, we were going to keep on the people that were most valuable to us as much as we possibly could.

Q. Would you point out on here when Mr. Cash and Mr. Isgro stopped working at Little Neck, according to this chart which is Respondent's Exhibit 14. A. Mr. Isgro, his last week was -- the week of December 21st.

Q. What about Mr. Cash? A. Mr. Cash was the week of January 18.

Q. If you refer to the fourth page that is at the bottom of
1060 this chart, there are indications that there was a Mr. Larry Moskowitz and a Mr. Romeo who had hours at that time? A. Yes.

Q. Could you explain how it came about that Mr. Moskowitz was given hours at that time? A. Well, at the time Larry Moskowitz was a friend of Mr. Schwartz' and he used to work in the Little Neck health store as a stock boy. We used to give him hours to help him out.

He had a problem, he had no father at home and he was having troubles at home and they had very little money and Mr. Schwartz had promised him once he had reached I believe it was his 17th birthday that he would give him hours as an instructor in the gym.

Q. How did you know this? A. Mr. Schwartz had told me.

Q. What kind of kid was this Mr. Moskowitz? A. He was a 17 year old kid but he wanted to work. He didn't have too many friends. Seemed like he had the whole world on his shoulders and we wanted to do something to help him out.

Q. At that point was there any reason, do you recall, for needing hours at that point in terms of -- A. Yes. Well, we had just had Mr. Isgro had quit the week before so there was an opening for hours.

1061 Q. Was there somebody else also who gave you hours too? A. Also at the same time we gave hours to Al Romeo.

Q. Why didn't you give hours at that point to Mr. Kaufman? A. Well, these hours that were given out we would rather not have given to Mr. Kaufman because at the time we didn't want him working more than he did because of his attitude.

We weren't getting the service out of him that we required to run the force so we chose to give it to these new men.

Q. You said certain things about Mr. Kaufman on the job. Did there come any time where that changed at all? A. Yes.

Q. Tell us. A. Passing of a few months, let us say, around April, May, he seemed to have changed. His attitude was better. He was carrying out his responsibilities to a better degree than what he had been.

Q. There has been some testimony that you offered him additional hours in June or so, I believe. A. Yes.

Q. Do you recall that testimony? Were you here? A. Yes, I believe so.

1062 Q. Why did you offer him hours at that point? A. Well, at that time business was picking up and we needed more hours to be worked and at the time he was working well.

He was doing a good job as an instructor so I asked him if he could use the extra hours.

Q. There was some mention of a fellow by the name of Guarino. Where did he get into the picture? A. Joe Guarino was my assistant floor manager.

Q. I think there was some testimony there was a gentleman who was sick? A. Oh, yes. Well, at that time Mr. Guarino was out sick with walking pneumonia and there were a lot of hours that he had in the gym that had to be filled in and I asked Mr. Kaufman to cover some of those hours.

Q. To your knowledge were Mr. Kaufman's hours changed because of any union activity he had engaged in? A. No.

Q. Do you recall, did you speak to Mr. Kaufman about his calisthenics classes being taken away? A. Yes, I did.

Q. On one occasion or more than one occasion? A. I believe on two occasions.

Q. And do you recall the conversations? A. Yes. Well,
1063 on the first occasion, I'm not exactly sure what the date was, somewhere around February I had just mentioned to him. I said -- I don't even remember what class it was, but I had mentioned he wasn't going to be teaching one of his classes any more, that Ray Ramos would be taking over.

He just said fine, you know, didn't argue or ask why.

And on the second occasion I had also mentioned that he wouldn't be teaching an additional class and he just looked at me and said, "Well, that is less work off of my back."

MR. MONAT: I would like to offer the documents numbered 16, 17, 18 and 19.

JUDGE MALLER: Is there any objection?

MR. BLYER: May I see them? No objection.

MR. MONAT: I have no further questions, Your Honor.

JUDGE MALLER: Well, Respondent's Exhibits 16, 17, 18 and 19 are received in evidence.

(Respondent's Exhibits for identification 16, 17, 18A through F and 19 received in evidence, of this date.)

* * * * *

1064 Q. (By Mr. Monat) Mr. Wolf, do you recall a conversation in 1974, perhaps about February or March, where there was Mr. Matinelli and yourself and Mr. Ramos and there was some mention of a quarter or something like that. A. Yes, I do.

Q. Tell us what you recall of that. A. Fred Ramos and myself and Matinelli were standing in the gym in the Little Neck Spa and I asked Phil if he would work Thursday nights from now on and he said fine, but when I told him at the same time he wouldn't be working Tuesday nights anymore so he asked me why. So I said

1065 well, we needed somebody on Thursday nights so he wanted to know why he couldn't have Tuesday nights and Thursday nights.

The answer I gave him then was that I was going to put Larry Moskowitz on Tuesday night for those extra hours because Larry was making 25 cents less an hour than Phil and it would save money on the payroll.

I said that because the actual reason for me not putting Phil on both nights was that I wouldn't have Richard Kaufman and Phil Matinelli working together on the same night because it seemed when these two were together is when I had the most problems running the floor.

When they were together they would be standing around talking and not getting the job done so I felt that splitting them up would be more beneficial to, you know, the way the floor was being run.

So I had told Phil that I had given him the reason of, you know, 25 cents less rather than told him the real reason and have any more possible difficulties with respect, you know, against me on the floor.

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CROSS EXAMINATION

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1066 Q. (By Mr. Blyer) Respondent's Exhibit No. 16. Let me hand it to you.

You issued that when? When did you issue it to Mr. Kaufman? A. November 27th.

Q. Is that when you asked him to sign it? A. Yes.

Q. But when did the event occur that caused you to issue

1067 that notice? A. November 13th.

Q. At sometime after the 13th or rather, on the 27th of November when you asked --

JUDGE MALLER: That is the date you said, the 27th or 22nd?

THE WITNESS: 27th.

Q. When you asked Mr. Kaufman to sign that notice what did he say to you? A. He said he didn't remember any such instance and that he wanted a Bill of Particulars and he wasn't going to sign it.

Q. What did you say? A. Well, he refused to sign it so I just -- I was aware of it and that was all there was to it. I didn't say anything else.

Q. Do you recall him saying Mr. Bieler told him that at about 9:25 in the evening as he was leaving at 9:30 that night he didn't really have to do that and that it could be done the next morning cleaning up the track; did he tell that to you? A. No, he didn't.

Q. Did Mr. Bieler ever tell that to you? A. No, he didn't.

Q. Are you aware of a meeting sometime around this time
1068 after the 13th of November among Mr. Orenstein, Mr. Bieler and Mr. Kaufman about that issue? A. No, I don't.

Q. Was there any specific time that you know of that Mr. Kaufman allegedly did not do his share of the cleaning duties, a specific instance? A. A specific instance? I can't give you dates.

Q. Can you give me a specific instance when he refused to do cleaning duties? A. Yes, I can remember one night, it was around 9 o'clock. I believe it was -- I'm pretty sure it was a Tuesday night.

Q. When is that taking place? A. Oh, I would say somewhere around the first week in December, somewhere in that area. I'm not sure of the exact date though.

Q. Yes? A. I can remember I asked Mr. Kaufman to clean the chrome which would involve dusting off all the machines in the track area, and after assigning him that duty that night, say half an hour passed which was the time when people should be, you know, the instructors should be doing the cleaning.

I went into the track area and I inspected and I looked around
1069 the Universal machines and I had noticed they hadn't been dusted, they were still covered with dust from top to bottom.

Q. Did you speak to him about it? A. Yes, I did.

Q. Did you issue him a warning notice? A. No, I didn't.

Q. What about his attitude toward the job? I think you testified that in around November of '73 you noticed a change; is that correct? A. Yes.

Q. With regard to the warning notice of December 11, 1973, Respondent's Exhibit No. 17 -- I hand it to you.

When did the incident occur that that warning notice was based on? A. When?

Q. Yes. A. That was November 17th.

It says on here the 28th but it was the 25th. That was my mistake, the 29th and December 1st.

Q. When did you issue the notice to Mr. Kaufman? A. December 11th.

Q. These signout sheets, on any of these nights that Mr. Kaufman did not sign out, do you know whether there was any problem regarding the amount of pay that he received? A. Not that I can recall.

1070 Q. Was he overpaid? A. I can't recall him being overpaid.

Q. Wasn't he paid correctly on each of those nights? A. As far as I remember he was, yes.

Q. Don't floor managers keep a separate record of the hours of their employees? A. A separate record?

Q. Yes. A. No. The only record of the hours worked are the sign-in sheets.

Q. But there was no problem with paying him? I mean, you knew how much to put down even though he didn't sign out; isn't that correct? A. Yes, I did.

Q. You didn't suspect he was leaving early, did you? A. On occasion a couple of nights when not signing out, when I was looking for him to sign out he wasn't in the club and I hadn't known exactly what time he did leave.

Q. You thought he was leaving early? A. He might have.

Q. No, I'm asking you, did you think he was leaving early? A. Yes, I did.

1071 Q. Did you speak to him about it? A. Yes, I did.

Q. You spoke to Mr. Kaufman about it? A. Yes, I did.

Q. Did you write a warning notice on that? A. No.

Q. That is a pretty serious offense, don't you think, walking out early? A. Well, the thing is I didn't know -- he didn't sign out so I couldn't actually say he did or did not walk out.

JUDGE MALLER: When did these events occur?

THE WITNESS: Which ones.

JUDGE MALLER: What you just testified to, that he didn't sign out and you looked for him and didn't find him.

THE WITNESS: This was the night that he didn't sign out. I can't remember exactly which night.

JUDGE MALLER: Where are the signout sheets?

MR. BLYER: I have them.

JUDGE MALLER: Was it before or after the dates involved in Respondent's Exhibit 18?

THE WITNESS: Well, it would be after, it would be after one of the nights --

JUDGE MALLER: It was after November?

THE WITNESS: This was after.

JUDGE MALLER: Thank you.

Q. You never issued a separate warning notice for that?

1072 A. No.

Q. You are saying there were other times other than those that he failed to sign out? A. I can't remember specifically any other times.

Q. But didn't you just say one night that you were talking; you were looking for him when he was supposed to be there and you couldn't find him? A. Right, and he hadn't signed out that night either.

Q. There were other times? A. That was one of those nights.

Q. One of those nights? A. Yes.

Q. But you still paid him for the full time? A. Yes.

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1074 Q. Isn't it true that it is a common thing that employees forget to sign out? A. No, it isn't common.

Q. Well, it happens from time to time, doesn't it?

A. Rarely.

* * * * *

1075 Q. When did you notice in Richard Kaufman's behavior from November to February that you thought it was deficient? A. Well, before that time Richard Kaufman was a very very good worker. He was good with the members. He was good in the service department. He was excellent in cleaning up.

You didn't have to worry about him performing his duties. You just have to say something and he jumped to it.

After November or in the beginning of November, beginning in November his work duties slacked off. He was holding conversations on the floor with other instructors, slipping off into the auxiliary gym, standing in the corner talking to people. He wasn't servicing the members. He was speaking to the instructors and his friends rather than servicing the members and his cleaning duties were not up to par.

1076 Q. From what you told me they sound like, to me, pretty serious infractions. Wouldn't you agree? A. I would say so.

Q. Especially the ones about not talking with other employees during work, disappearing off the floor and not servicing members?

A. Yes.

Q. You agree with that? A. Yes.

Q. You didn't issue any notices for any of those things?

A. Not at that time, no

Q. You issued one for failing to clean up the track?

A. Right.

Q. And you issued one for failing to sign out? A. Right.

Q. But nothing for disappearing off the floor, for not servicing members or speaking with other employees unnecessarily on the floor?

A. Right.

Q. And at all times you paid him? A. Yes.

Q. Never docked him for talking or dilly dallying or for disappearing off the floor or for just not doing his job.

JUDGE MALLER: Is that correct?

1077 THE WITNESS: That's right.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Q. Didn't you think you were taking a serious chance with your own job by not informing someone about these things?

A. Well, my supervisor was aware that I was having problems with him.

Q. Who was aware? A. Mr. Bostinto, Mr. Flickstein.

Q. Who told them? A. I told Mr. Bostinto. He knew I was having problems.

Q. When did you tell it to Mr. Bostinto? A. Various occasions we spoke about it.

Q. You said from November through February he was doing all these things you found were improper. When did you tell Mr. Bostinto the first time about difficulties, disappearing off the floor,

not servicing members or having conversations that were not proper or anything else? A. Well, I had spoken to him about his work slackening off and his duties slackening off but I hadn't really come right down and had a serious or done anything serious about it until February, the middle of February.

Q. You say in passing you mentioned to Mr. Bostinto?

1078 A. When he asked me if I was having any troubles I would explain to him.

Q. Didn't you testify when you spoke to Mr. Schwartz on February 7th about problems that you were having with Mr. Kaufman he asked you had you spoken to Mr. Bostinto and you said no? A. I haven't spoken to him in any depth, no.

Q. Didn't you testify that you said you had not spoken to Mr. Bostinto up to that time? A. I testified that, yes.

* * * * *

1080 Q. But you recall Anita Katz' testimony when she would go to the different spas she observed, that was part of her job, to observe the people doing the work? A. Yes.

MR. MONAT: I object.

JUDGE MALLER: Overruled.

Q. How about Mr. Bostinto, didn't he do that?

MR. BLYER: I'm sorry, I rushed into a second question.

1081 JUDGE MALLER: I overrule the objection.

MR. BLYER: I'm sorry.

Q. Mr. Bostinto, didn't he do that too? He didn't look at what the employees were doing? A. Sure he did.

Q. Did he ever issue a warning notice to Mr. Kaufman from November to February for any of these infractions? A. No, he didn't.

Q. Did Mr. Bieler? A. No, he didn't.

Q. How about Mr. Flickstein? A. No, he didn't either.

Q. Didn't he supervise the gym too during that period from time to time? A. Yes, he did.

Q. How about Mr. Orenstein, didn't he too supervise in that period? A. Yes, he did.

Q. How about Mr. Ramos, November through February, wasn't he also a supervisor there? A. He came in in late February, I believe.

Q. Are they all as close friends to Mr. Kaufman as you? A. No.

Q. So they didn't withhold any of these issuances, any
1082 of these notices out of friendship? A. No.

Q. So what happened to that friendship when on February 7th you told Mr. Schwartz about what Mr. Kaufman was doing? What motivated you, what motivated you then to tell Mr. Schwartz about the things that you thought Mr. Kaufman was doing wrong?
A. That wasn't the 7th.

Q. February 7th I thought you said. A. That was when I wrote the letter.

Q. When was your conversation with Mr. Schwartz?
A. Approximately a week before.

Q. All right, what caused you then, what caused you then to tell Mr. Schwartz about that? A. I felt my job was in danger, couldn't run my floor right.

Q. Oh, you had come to that conclusion at last that your job was -- A. I felt I was jeopardizing myself, right.

Q. Your job was in danger? As a result of your conversation Mr. Bostinto eventually contacted Mr. Schwartz; is that right?

As a result of your conversation and the letter you sent? A. As of the letter, yes.

Q. Mr. Bostinto contacted Mr. Schwartz.

1083 MR. MONAT: I object.

JUDGE MALLER: What is the basis of the objection?

MR. MONAT: I just don't know, he is saying as a result of Mr. Bostinto contacting Mr. Schwartz.

JUDGE MALLER: If the witness doesn't know he may say so.

Q. Mr. Schwartz told you to tell Mr. Bostinto, right, about the problems you were having with Mr. Kaufman? A. Right.

Q. What did Mr. Schwartz exactly tell you when he told Mr. Bostinto? A. He asked me if I was having any problems and when I told him I was having problems he told me, "Why don't you notify Andy or drop a note for him to talk to you?"

Q. Did you tell him the nature of the problems with Mr. Kaufman? Did you tell Mr. Schwartz? A. Yes.

Q. You outlined them just as you have outlined them here today? A. More or less.

Q. Did Mr. Schwartz say to you these are serious things? A. I don't remember him saying that, no.

Q. He told you at least to contact Mr. Bostinto? A. Yes.

1084 Q. Then you did so through a letter? A. Yes.

Q. Then Mr. Bostinto contacted Mr. Schwartz, is that correct, if you know? A. I believe he did, yes.

Q. Then you had a conversation with Mr. Bostinto? A. Yes.

Q. And he told you that Mr. Schwartz said, "Well, you just have to live with it?" A. Yes.

Q. Didn't that strike you as a bit odd? Here you thought your job was at stake for things Mr. Kaufman was doing, you told

Mr. Schwartz all about him, told Mr. Bostinto and they tell you, Gee, you will have to live with it."

These are serious things not servicing members, not doing his job, talking with other employees, disappearing from the floor.

JUDGE MALLER: Was that a question?

A. I don't know.

Q. Yes, it is a question. Didn't you think that was unusual for him to say you would have to live with it? A. I don't think it was unusual but I felt better now that I knew my supervisor knew I had that problem on the floor.

* * * * *

1089 Q. When was it that you believe Mr. Kaufman was reduced to no calisthenics classes entirely? A. Exactly when I don't know.

Q. I know but the best you can do with it. A. The end of February, the beginning of March, some place around there.

Q. Do you know when Mr. Ray Ramos -- first of all, who took over those classes? A. Ray Ramos.

Q. Four calisthenics classes that we are talking about, he was reduced from seven to four, do you remember that? Then from four to zero. We are talking about two calisthenics classes. A. No, I don't think he went from four to zero at once.

Q. One time he had four? A. Yes.

Q. Then he had zero? A. Yes.

Q. Mr. Ramos took over these four? A. I believe so, yes.

* * * * *

1090 Q. Why was it you took away his calisthenics classes?

A. Why was it?

Q. Why were they taken away from Mr. Kaufman?
A. In order to let Mr. Ramos teach them.

Q. All right, any other reason? I mean Ramos should teach them so he could reach the members. A. Right. Also at the same time Mr. Kaufman wasn't performing that well as an instructor and we felt that it would be better off to have someone also be able to give classes in case he wouldn't give classes, or he might leave
1091 because there was a rumor that he might be quitting soon.

Q. He didn't quit, did he? A. No.

Q. And there must have been about four or five or six people after Ramos who were given those classes, right? You did them in fact. A. I did, yes.

JUDGE MALLER: Were there others who gave the classes?

THE WITNESS: There were others. I don't know exactly how many.

Q. The fact that there were rumors that he was leaving, would that explain why he was never again asked to teach another class except for the Pete Trainer incident? A. No, that wasn't the only reason. The reason being that we felt that if he wasn't doing a well enough job on the floor as an instructor and carrying out his duties, calisthenics classes is a harder task than that, so if he couldn't work well on the gym floor then obviously he wouldn't be giving as good a performance in the ballet room.

Q. Did you get any letters or any documentation from any members complaining about his performance in calisthenics classes?
1092 A. Not letters, no.

Q. Did you get anything in writing from members complaining about the way he was giving those classes? A. No.

Q. Did you go in and sit there and observe his classes?
A. No, I didn't.

Q. Didn't you in fact on your day off come into take Mr. Kaufman's calisthenics class? A. This was much before.

Q. What about this period from November through February? A. No.

Q. You stopped coming into do that? A. I didn't come into take classes anymore.

Q. Now, there came a time when Mr. Kaufman was reduced from 20 1/2 to 9 1/2 hours of work a week; do you recall that? A. When was this?

Q. Well, the week ending February 8th Mr. Kaufman was teaching 20 1/2 hours and the week ending two weeks later he is down to 9 1/2, working 9 1/2 hours. A. That was the week of the 22nd, right?

Q. Yes. So in two weeks he went down 11 hours; is that right? A. Right.

1093 Q. This was in February? A. Right.

Q. On that occasion why were his hours reduced? A. We need hours for a full timer that was at the club who was Glenn Tausak. The hours that Glenn Tausak was working weren't needed in the club because it was just an overstaffed period of time.

In other words, there were too many people and myself and Mr. Tausak. So in order to keep Mr. Tausak with the full time hours, he had to be given new hours which had to come from the part timers.

Q. Any other reason? A. Any other reason for taking the hours?

Q. Taking Mr. Kaufman's hours away, yes. A. Well, I would take Mr. Kaufman's and the reasoning that I would take it away from the person that was least valuable to me at the time who was not performing the job as well as anyone else on the floor.

Q. Anything else? Any other reason why you took away his hours? A. No.

Q. This was a particularly busy time of the year, wasn't it, February? A. No, not really.

Q. Do you recall, were you here when Gabriele Schwartz
1094 testified? A. Yes.

Q. Do you remember her saying that from January through April it was definitely a busy time of year?

MR. MONAT: I object. I'm not sure that is exactly what she said. A. I don't remember.

JUDGE MALLER: Overruled.

Q. Isn't it true that during this period of time the company had another promotion? A. Had what kind of promotion?

Q. Another promotion, a Valentine's promotion.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

A. I don't believe so, no.

MR. BLYER: Let me have this marked, please, as General Counsel Exhibit 6 for identification.

(Document marked General Counsel's Exhibit 6 for identification, of this date.)

Q. I show you what has been marked for identification as General Counsel's Exhibit 6. Can you identify that? A. Yes, I can.

Q. What is that? A. This is a guest pass.

1095 Q. What period of time? A. It expired March 31, 1974.

Q. When did it begin, that offer? A. I'm not sure.

Q. When do you think it began? Look at the nature of the exhibit. A. Well, it was around Valentine's Day.

MR. BLYER: Thank you.

Q. That lasted for about a month and a half? A. Yes.

Q. This was the time it would be good to have your best instructors on the floor, is that right, as much as you could in order to persuade these people that were coming down to join up, becoming members; isn't that correct? A. That is always true.

Q. Especially when you have a promotion? A. Well, this wasn't really a promotion.

Q. What would you call it? A. These are guest passes, just made up just for Valentine's Day. Guest passes are always passed out in the gym. It so happened that this holiday came up and we made heart shaped guest passes.

Q. So these have an expiration date, don't they? A. Yes.

1096 Q. Don't they give the impression to an individual he has got to come in and sign up, take advantage of that guest pass soon? A. It might.

Q. Might?

During this period of time is it true that Mr. Matinelli's hours were also reduced? A. Yes, they were.

Q. What do we have there about his hours being reduced? A. The same reasoning.

Q. No, what were his hours? A. His hours? Let's see.

The week of the 15th they were 17 1/2. The week of the 22nd they were 8 1/2.

Q. Thereafter is it essentially true that Mr. Matinelli did not work more than 8 1/2 hour up until and through the 21st of June? A. I believe so.

Q. And then Mr. Kaufman didn't work more than 9 1/2 hours except for maybe one or two occasions where he worked 11 and 12 hours up until the 21st of June? A. I think so.

Q. Do you remember telling Mr. Matinelli and Mr. Kaufman at about this time in the presence of Mr. Ramos that they were your

1097 best instructors? A. Yes, I did.

JUDGE MALLER: I'm sorry, read that question, please.

(Whereupon the last question and the answer thereto read by the reporter.)

Q. With regard to Mr. Tausak, again what was the reasoning behind your statement that you took Mr. Kaufman's hours away so that you could maintain Mr. Tausak's hours? Can you explain that to me again? A. Glenn Tausak was working hours, quite a few of them were with me when he would be working on a Wednesday or Monday on the track area during the day where we didn't need more than one person.

Glenn was a full timer and those hours had to be cut, so in order to cut his hours and keep him at full time we had to make up those hours with the part timers, being that the full timer was more valuable to us.

Q. Let us look at Respondent's Exhibit number --

MR. BLYER: Your Honor, I would like to have these marked as General Counsel Exhibit 7A, B, C and D.

(Documents marked respectively General Counsel's Exhibits 7A, B, C and D for identification, of this date.)

Q. Mr. Tausak had once been a sales manager; is that right? A. Yes.

Q. Then he was a floor manager somewhere else?

1098 A. Right.

Q. And he came to you as an instructor? A. Right.

Q. So he was steadily going downhill in terms of position, wasn't he? A. Yes.

Q. And he was working for you at that time approximately how many hours, if you recall say in the beginning of February 1974. A. 32, 35 something like that.

Q. Mr. Kaufman once worked 31 hours, didn't he? A. Yes.

Q. But you wanted to make sure that Mr. Tausak got his 30 hours or so; is that right? A. Right.

* * * * *

Q. Let me show you what has been marked for identification as General Counsel Exhibit 7D. That is the payroll schedule for which week? A. 2/8/74.

Q. How many hours did Mr. Tausak work, scheduled for? A. Scheduled for 32.

Q. What days is he working? A. This week he worked everyday except Thursday.

1099 Q. The following week how many hours is he scheduled for? A. 32.

Q. What days did he work? A. Saturday, Sunday, Wednesday, Friday.

Q. So the only change was to do what, the only change in his schedule from 2/8 to 2/15? A. He was given hours, Monday night taken away from a part timer, I suppose. He was added on Monday night hours. He was added on Tuesday night hours. That is what he was added on.

Q. He got more hours Monday night and more hours on Tuesday night? A. Right.

Q. For the week ending 2/15; is that right? A. Right. No, no, 2/15, right.

* * * * *

1100 Q. I'm asking you what days didn't he work, the same days on 2/15 as 2/22? A. The same days of the week, yes.

Q. Didn't he work the same days of the week on 2/29 that he worked on 2/15 and 2/22. A. Yes, the same days of the week.

Q. So in this period of time when you reduced Mr. Kaufman's hours the only change in Mr. Tausak's days of work were when, comparing now 2/8/74, 2/8/74 with the subsequent three week pay schedules? I'm talking about days now. A. His Tuesdays were completely eliminated from the schedule. He was not working the Tuesdays any more.

Q. Didn't he normally not work Tuesdays? Didn't he go to school on Tuesdays and Thursdays during that period of time? A. He did in the period after. I don't know about any of the period before, I'm not sure, I don't remember.

Q. So the only change really is this one Tuesday now that Mr. Tausak is given some hours. A. As far as days are concerned.

Q. As far as days are concerned? A. Yes.

Q. In the period of time after Mr. Matinelli and Mr. Kaufman

1101 are reduced in hours, between the period of February 8th and February 22nd, from that period on until the 1st of June through the week ending the 21st of June, from time to time isn't it true Mr. Moskowitz and Mr. Romeo are called into perform work beyond their normal scheduled hours? A. On occasion there might be, yes.

Q. Isn't that true also for Mr. Marciano who begins working for the company sometime -- where is it? Around May? Look at the exhibit in front of you. A. May.

Q. Doesn't he too work hours beyond that he is scheduled for? A. One day he worked.

Q. Pardon me? A. One day I believe he did, yes.

Q. I think you are reading it the other way. Isn't it true that he is not scheduled for hours at all? A. No, at the time he was.

Q. But on that sheet what does it say about how many he is scheduled for, normal scheduled hours? A. It doesn't have any down but it should.

Q. It is blank, it is blank for three out of the four weeks he works, isn't it? A. Yes, it is.

Q. But the first week he works he comes in for 30 and
1102 22 1/2 and then 34 and right then he is scheduled for 30 but he only works 1[illegible] 1/2; isn't that correct? A. Yes.

* * * * *

Q. Just one point back again to Mr. Tausak. When you took the hours away from Mr. Kaufman and Mr. Matinelli back in mid-February do you remember what days you took away? A. I'm not exactly sure but I think one was a Thursday night and one was a Tuesday night.

* * * * *

1103 Q. Isn't it true that it is only when Mr. Karpf comes to work for the company that Mr. Matinelli and Mr. Kaufman begin working more hours than they were scheduled for? A. That is true.

Q. Did you ever issue any warning notices to Mr. Matinelli for any poor performance? A. No. Oh yes, I did.

Q. Do you remember? A. Yes.

Q. What did that relate to? A. I don't remember exactly. I know I issued him a warning though.

* * * * *

Q. Mr. Wolf, why was it that from this period in late February 1974 at least until the week ending the 21st of June, 1974 that Mr. Matinelli and Mr. Kaufman never were called in to work additional hours? Never while Marciano and Pillinger, Romeo and Moskowitz worked? A. Well, we didn't call them in just because the same reason that his attitude was bad.

1104 Q. Does that apply to Mr. Matinelli too? A. Not as much as Mr. Kaufman but yes, we still had trouble with him also.

Q. During this period of time did you issue either of them any warning notices? A. No.

Q. Their attitude was continually bad throughout this period; is that right? A. Yes.

Q. As of March 24th you were making $200 a week; isn't that right? A. As of when?

Q. March, late March 1974? A. Approximately.

Q. About $200 a week? A. Yes.

Q. You testified that you went in earlier because you felt your job was in jeopardy. What about again here the three or four month period two men not performing their job well, why didn't you write any warning notices to get rid of these guys? A. I didn't want either one of them fired. As long as they were not working together I could control them on the floor and more or less have them carry out their duties.

1105 Q. You weren't fearful because of their poor work performance that your job would be jeopardized? A. No.

Q. Why did you start giving them hours again? That would be in late June and July and up until now. A. Well, attitudes changed. They began to be a little more friendly, they took a

little more interest in their job again and they were servicing the members the way they should have been.

They were participating as far as cleanup and everything was concerned. They were doing a good job so I, you know, I saw no reason why I should give them the hours if they wanted.

Q. Prior to that, for that three month period they were not doing any of that? A. They were not carrying out their jobs well, no.

Q. And no warning notices at all? A. No.

Q. It was your understanding that one more and that would have been it for them? A. Yes.

Q. At least for Mr. Kaufman? A. Mr. Kaufman.

Q. And Mr. Matinelli? A. Had only gotten one.

1106 Q. So he had a chance for two more? A. Yes.

Q. But you didn't submit a second one for him, did you? A. No.

Q. Can you be anymore specific in what you observed in them that all of a sudden you gave them more hours? What transformation did you observe exactly? A. You could tell, you observed, watched the way a person works, you see the way he works with the members. Instead of goofing off he is talking to a member instead of talking with someone else. He is cleaning the machines when it should be done.

The gym itself is being kept up, being kept more clean and you can see who is doing the work. That is my job.

Q. All during this period from late February to early March the individuals I mentioned before, Mr. Ramos -- excuse me, rather that individual, was there an assistant floor manager at that time? You were the floor manager, right? A. Yes, there was an assistant floor manager on and off. They switched.

Q. And sales manager? There was a sales manager?
A. There is always.

Q. Was there an assistant sales manager? A. Yes.

1107 Q. At that time? A. Yes.

Q. And there is an area supervisor? A. From time to time.

Q. And a service supervisor? A. Yes.

Q. And probably Mr. Schwartz come into the gym from time to time? A. Yes.

Q. No one else observed anything that Mr. Matinelli and Mr. Kaufman were doing and themselves issued a warning notice or told you to issue one? A. No, nobody told me to issue a notice, no.

Q. To your knowledge none of them ever issued a warning notice? A. No.

Q. But they were doing things that were so obvious to you that you decided well, gee, we can't give them any more hours?
A. Right.

Q. Do you remember Mr. Matinelli getting a raise in February of 25 cents? A. Yes, I do.

* * * * *

1108 Q. You mentioned something on direct examination about business picking up in June. Did you mean that? A. Did I mean it?

Q. Yes. A. Sure I meant it.

Q. That business picked up in June? A. Workouts were higher, more people were in the gym.

Q. Assuming that is accurate, was that a reason why they were given more hours? A. No, the reason why I gave

them hours is because they were working well. I didn't have to give it to them.

Q. So the fact that business was picking up in June had nothing to do with Mr. Kaufman and Mr. Matinelli getting more hours? A. Well, of course it did. It made the hours available for me to give it to them.

Q. So in June, July and August you are saying the number of workouts was increasing? A. The demand for service in the gym was increased.

Q. Which would mean basically workouts? A. Sometimes.

Q. Calisthenics classes? A. No, the calisthenics classes never changed.

1109 Q. Do you also remember Mr. Matinelli getting a second raise in the beginning of June? A. He did.

Q. In 1974? A. Yes.

Q. Were you familiar with this petition that was circulating around the members to restore, to attempt to restore Mr. Kaufman to calisthenics classes? A. I had heard of it. I have never seen it.

Q. You had heard of it? A. Yes.

MR. BLYER: Thank you, Your Honor, I have nothing further.

JUDGE MALLER: Any redirect?

REDIRECT EXAMINATION

Q. (By Mr. Monat) Do you know if Frank Bieler and Mr. Kaufman were friendly? A. Yes, they were.

* * * * *

1111 Q. I think there was some testimony about Mr. Bieler being the supervisor over Mr. Kaufman as well as yourself. Did

you observe Mr. Bieler's performance with respect to supervising Mr. Kaufman? A. Yes.

Q. In December? A. Yes.

Q. Can you describe his performance as supervisor?

MR. BLYER: Your Honor, I object on the grounds it is repetitive, he already described Mr. Bieler's alleged performance at that time in direct testimony.

MR. MONAT: I think this goes to the specific questions of whether there were other supervisors there.

JUDGE MALLER: I will let him answer.

A. Well, I had noticed in December one time in particular when Mr. Bieler had assigned cleaning duties at the end of the night particularly to Mr. Kaufman which also involved vacuuming.

He had told Mr. Kaufman to vacuum an area in the gym and at the end of the night it wasn't done and when Mr. Bieler asked Kaufman, "Did you vacuum?" Mr. Kaufman said, "Oh, no I didn't get to it."

Mr. Bieler didn't say anything. He said -- he just let it go by,

1112 but after Mr. Kaufman left he said, "I should have reprimanded him but it is my own fault for being a nice guy."

Q. There was some statement made about Mr. Kaufman and Mr. Matinelli being best instructors. When was that made?

A. I can remember telling Mr. Ramos that with the two of them present.

JUDGE MALLER: When was that?

THE WITNESS: The end of January, the beginning of February.

Q. I don't understand, Mr. Wolf, you said you made that statement to Mr. Ramos? A. Yes.

Q. At a time when you were having problems with Mr. Kaufman particularly? A. Well, that is something I would do regardless

of who the employee is. When you say something like that to another supervisor or something and you say well, here are my two best instructors or something, it is more or less an incentive for the instructors themselves.

Q. Were they there when you said that? A. I believe they were, yes.

Q. Which of the supervisory personnel who are present on the floor in the gym normally are there regularly supervising throughout the day or evening? A. Just myself.

1113

Q. What is your position? A. Floor manager.

Q. And if there is an assistant floor manager -- A. Then he will be there also.

Q. Do you recall there was a time when the executive offices were located in the same gym as the Little Neck spa? A. Yes.

Q. Did there come a time when that changed? A. Yes.

Q. Do you recall approximately when? If you don't --

A. Somewhere around April I guess, or March.

Q. And they moved to Lake Success? A. Yes.

Q. Were you at anytime friendly with Mr. Kaufman?

A. Yes.

Q. Are you still friendly with him? A. Yes, I am.

Q. Do you recall seeing him at a social occasion recently?

A. Yes, I do.

Q. When was that? A. My birthday party.

MR. MONAT: Nothing further, Your Honor.

FURTHER RECROSS EXAMINATION

1114

Q. (By Mr. Blyer) Just one area. When you say Mr. Kaufman and Mr. Matinelli were present when you told them they

were the best instructors -- A. I don't believe -- I don't remember it that well, but I do remember telling Mr. Ramos and I do believe they were there.

Q. That was the end of January, early February, around then? A. In the area.

Q. Mr. Ramos had been there for a while, right, when you said that? A. Not too long.

Q. Would you say he knew the quality of work that Mr. Kaufman and Mr. Matinelli were doing at that time? A. Possibly. Still wasn't that familiar with anybody at all.

Q. In this conversation --

JUDGE MALLER: How long had he been there at that time?

THE WITNESS: Just a couple of weeks I think.

MR. BLYER: Your Honor, if we could, I would like to offer as a stipulation the date of work, the date Mr. Ramos began working at Little Neck.

Mr. Monat, would you be willing to stipulate that Mr. Ramos began working for the company at Little Neck as floor manager on the 29th of December?

1115

MR. MONAT: Is it on the chart?

MR. BLYER: That is the breakdown day by day. That tells you what week ending.

MR. MONAT: The week ending January 4th.

MR. BLYER: And the date is December 29th, right?

MR. MONAT: No.

MR. BLYER: Counting back.

MR. MONAT: Let's see. The 29th.

JUDGE MALLER: You so stipulate, Mr. Monat?

MR. MONAT: Yes.

JUDGE MALLER: Very well, the stipulation is noted.

Q. The first week Mr. Ramos was there how many days did he and Mr. Kaufman work the same day? A. Four days.

Q. How about the next week, the week ending the 11th of January? A. Four days.

Q. How about the week ending the 18th of January?

A. Four days.

Q. And the week ending the 24th of January? A. Four days.

Q. With regard to Mr. Matinelli, the week ending the 4th of January, how many days did Mr. Ramos and Mr. Matinelli work

1116 together? A. One.

Q. Look again, please, see if it is one. A. It is one.

Q. One? A. One.

Q. How about the week ending the 11th? A. Two.

Q. And the week ending the 18th?

MR. MONAT: Your Honor --

A. Two.

MR. MONAT: Are you referring to documents that are identified?

THE WITNESS: No, they are not. Are they?

MR. BLYER: They haven't been identified, I'm sorry.

MR. MONAT: If you want to stipulate to some hours I will do it if it is reflected in the payroll.

MR. BLYER: I would have been glad to -- we have one more document. Do you want me to identify them now? These were being used to refresh his recollection and I should have had them identified.

JUDGE MALLER: Mark it G.C. 8.

Let the record show that General Counsel and the witness were both referring to payroll records identified as G.C. 8A, B, C and D.

(Documents marked General Counsel's Exhibit 8A, B, C and D for identification, of this date.)

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1117 FURTHER REDIRECT EXAMINATION

Q. (By Mr. Monat) Mr. Wolf, I just would like you to explain this best instructor statement, how it came about and where it was said and who was present. I don't understand it.

1118 A. I can remember standing in the main gym one day.

Q. You are saying this is January or February?

A. Well, January, February, I don't remember the exact date, all right? What I usually do, just like a policy with myself, if I have someone working for me, especially someone that -- an instructor in the gym or someone that is standing around, let us say, with a supervisor or something, a way to pick up their morale or a way to make them feel let us say, just to give them an inspiration or something is to praise them to someone with a higher authority.

Like I would walk up to someone and say well, this is my instructor Richard, he is one of my best instructors, you know, sometimes that will bring up the morale of an employee.

Q. I see. What did you say at this particular time that you recall? A. I said to Mr. Ramos, I remember I patted Mr. Richard Kaufman on the shoulder and said these two right here are my best instructors.

* * * * *

1119 DENNIS KARPF

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mr. Karpf, would you state your name and address, please? A. Dennis Karpf, 1447 E. 2nd Street, Brooklyn.

Q. Are you presently employed by Jack LaLanne?

A. Yes, I am.

Q. Where are you employed? A. At the Little Neck club.

Q. What is your position? A. I am the manager of the club.

Q. How long have you been manager? A. I have been the manager of Little Neck. I started the third week in June.

Q. What was your position with the company before that?

A. I was the manager of the King's Highway spa.

Q. How long, approximately? A. Two years.

Q. Do you recall any conversations with employees when you first came to the Little Neck Spa? A. Yes, I do.

Q. Who did you speak to, which employees? A. The entire staff.

1120 Q. All together or different times? A. No, individually.

Q. Do you recall a conversation with Richard Kaufman?

A. Yes, I do.

Q. This is shortly after you became manager there?

A. Yes, it was.

Q. Where was the conversation? A. On the main gym floor.

Q. Was anyone else present at the conversation? A. No, no one else was present.

Q. What was the conversation, what was said? A. Well, I told Richie that it was good to be working with him and that I tried

to assure him that if there are any problems that I could ever help him with that came up, that he could come to me and my door was always open, and if I could help in anyway I would do it, I would do my utmost to do that.

Q. Anything else you recall that you said to him? A. Yes, I did. I knew about Richie's involvement with the union and I told him as far as I was concerned and I knew nothing about it and we were starting with a clean slate, and I also said if there were any available hours, if somebody was out ill, if he would be willing to fill in if such a situation arose and he assured me that he would and I said fine.

1121 Q. What did Mr. Kaufman say to you, do you recall? A. Yes, Richie had told me there was a vendetta against himself, that his hours were cut and calisthenics classes were taken away.

Q. What did you say to that, do you recall? A. Yes, I did, I said well, I know nothing about it and as far as I'm concerned I have no vendetta against anybody. I just try to make everybody as comfortable as possible and hopefully they would do the same for me.

Q. Do you recall any other conversations subsequent to this with Kaufman along the same lines? A. No, I only recall one conversation.

Q. Did you say anything to him about Mr. Schwartz or anything like that? Did you mention Mr. Schwartz' name to Mr. Kaufman? A. Not that I recall, no.

Q. Did you have any conversation with Phil Matinelli shortly after you came to the Little Neck Spa? A. Yes, I did. It was basically of the same nature.

Q. Just tell us what you recall of that conversation? A. Sure. I asked Phil if he had any problems I could help him with.

He said nothing really specifically except that his hours were cut also, and I don't think he mentioned anything about
1122 calisthenics classes being taken away from him. I don't even know if he taught classes.

I said well, as I told Mr. Kaufman, that if any hours did become available, if he would be willing to fill in, if somebody was ill or if the schedule opened up and he assured me that he would.

As a matter of fact, that evening I believe there was somebody out ill and I asked him if he would cover and he said yes, and I believe that weekend also Mr. Guarino was out ill and instead of working half a day I said can you work the whole day and he said yes, and I thanked him. I shook his hand.

Q. Was there any mention of a vendetta in his conversation? A. Well, Mr. Matinelli also mentioned that they had some sort of vendetta against him for his union activities.

I said as far as I'm concerned I have nothing against anyone, the slate is clean.

Q. Did you make any statements about that you would stop bringing other guys into cover the gym or anything like that and give the hours to them, you would stop bringing other guys in? Did you make any statement like that? A. To my knowledge there were no guys ever brought in, you know, while I was there.

1123 Q. Did you make that statement, any statement like that? A. No, I didn't.

Q. When you talked to Mr. Matinelli was anyone else present? A. No.

Q. Did you speak to other employees as well? A. Yes, I did.

Q. What was the nature of your conversation with other employees? A. I just told them it was good to be working with

them and I tried to establish a rapport. Whenever you meet somebody new or whenever you go some place new, and I assured them that my door was always open, would always be open if there was any problem I could ever help them with they could come and see me, and I would try to do the best of my ability to solve that problem or refer it to somebody else who could.

I just told everyone it was good to be working with them and to try to make my job as easy as possible.

MR. MONAT: I have nothing further.

JUDGE MALLER: Cross-examination.

CROSS EXAMINATION

Q. (By Mr. Blyer) When before working at the Little Neck
1124 location did you work for Jack LaLanne? A. Yes, I did.

Q. Where was that? When did you start? A. In September will be three years.

Q. You had separate conversations with Mr. Matinelli and Mr. Kaufman shortly after you began working at Little Neck, didn't you? A. That's correct.

Q. Is it your testimony that both of them used the word, "vendetta"? A. As I recollect, yes.

Q. The area supervisor at the time in June and July of '74 was Mr. Flickstein? A. That is correct.

Q. You told both of them that you would attempt to give them work when someone was ill or in emergencies? A. That is correct.

Q. Had you spoken to anyone else in management about them before telling them that? A. Not at that point. I generally --

Q. That answers my question. Prior to that you had not cleared that or spoken to anyone in management about that? A. No.

Q. The next day Mr. Matinelli went to work, isn't that right? He filled in for someone, or shortly thereafter?

1125 A. Shortly thereafter.

Q. Did you speak to anyone at management before he worked on those occasions? A. Before he worked on those occasions?

Q. Yes, you called him in or someone called him in shortly thereafter, after you had told him you were going to try to get him work when someone was ill or in an emergency; isn't that correct? A. Yes.

Q. There came a time when you called him in? A. Yes.

Q. Prior to having called him in did you speak to anyone about it? A. No.

Q. You did it on your own? A. Yes.

Q. As far as you know was there anything -- A. Was there anything? I'm sorry.

MR. BLYER: I withdraw the question.

Q. Did anyone tell you after Mr. Matinelli was called into work that you shouldn't have done that without speaking to Mr. Wolf or anyone else? A. I have the authority and the responsibility to do that as I see fit, and I acted on that authority.

Q. Well, did Mr. Wolf say to you, "Gee, you should have

1126 cleared that with me. I know how these guys work and they are not doing a job. Why are you calling Mr. Matinelli in for?" A. Mr. Matinelli was the one who would be most likely available at that particular time. Steve Wolf is my floor manager. I go upon his recommendations, and if there are operations and somebody can fill in --

Q. You said you didn't speak to Mr. Wolf before you put Mr. Matinelli to work. A. Let me try to remember.

I remember meeting Phil Matinelli and I thought he would be capable of being a good instructor based on my limited knowledge and I think we asked several people if they would be free and he was the first to volunteer and I believe that is why he was given those particular hours.

Q. But after he did work and --

MR. BLYER: Mr. Monat, can we stipulate on the week ending June 22nd Mr. Matinelli worked 8 1/2 hours?

MR. MONAT: Is it on the chart?

If the chart shows it, it is all right. Whatever the chart shows.

MR. BLYER: I will show it to you.

MR. MONAT: Which date?

MR. BLYER: The 21st.

MR. MONAT: Yes.

1127 MR. BLYER: The following week he worked 35 1/2 hours. It is not on the chart. You will have to look at your own records. The chart only goes up to the 21st.

MR. MONAT: 35 1/2?

Yes, if you will also stipulate there is nothing to show, there is a blank for normal hours on the 28th as well.

MR. BLYER: Sure.

Your Honor, I think we can stipulate that on the 21st of June, 1974 as reflected in the chart, Mr. Matinelli worked 8 1/2 hours, although he wasn't scheduled, there wasn't any normal scheduled hours.

MR. MONAT: The week ending the 21st.

MR. BLYER: Right, the week ending the 28th again there was no normally scheduled hours but he was employed for 35 1/2 hours.

JUDGE MALLER: So stipulated, Counsel.

MR. MONAT: Yes.

JUDGE MALLER: The stipulation is noted.

Q. After working 35 hours, Mr. Karpf, did Mr. Wolf or anyone else in management come over to you and question the fact that you had permitted Mr. Matinelli to work 35 hours? A. No.

Q. At any time has anyone questioned you about you calling
1128 in for work Mr. Matinelli beyond the 8 1/2 hours that he had been working prior to you coming to work for the company? A. No, I have never been questioned about it.

Q. How about with regard to Mr. Kaufman, prior to coming to work for the company he was working 9 1/2 hours regularly for two or three months, and subsequently we have testimony that he worked more than that.

That is after you came to the company. Has anyone questioned you about employing him beyond the 9 1/2 hours? A. No, they have not.

Q. You mentioned that when you first spoke to Mr. Kaufman you told him if he had any problems come to you? A. Yes.

Q. And that you knew about his involvement with the union? A. Yes.

Q. You told him that?

JUDGE MALLER: Say yes or no.

A. Yes, that is correct.

Q. Who told you about his involvement with the union?

A. Nobody had to tell me. This was common knowledge throughout the company.

Q. What were you told? What were you told about Mr.
1129 Kaufman and the union? A. Mr. Kaufman was simply trying to organize a union.

Q. Anything else? A. No.

Q. What did you mean that he was starting with a clean slate when you told him that? A. No, I meant I was starting with a clean slate. That as far as I know I was new there and I would hope that he would try to do as good a job for me as he probably had done in the past. I don't know, I never worked with the gentleman before.

When I first saw Mr. Kaufman and Mr. Matinelli they appeared as if they would be capable instructors.

Q. Was there any discussion that because you were familiar with that, because of Mr. Kaufman's involvement with the union, that anything had happened to him with regard to his job?

JUDGE MALLER: Discussion with whom?

MR. BLYER: Well, he said it was common knowledge. He has not been able to identify at this point how he knew about Mr. Kaufman's involvement with the union other than to say it was common knowledge around the shop, around the place of business.

Q. Isn't that correct? A. It was. I believe when the
1130 union business began, if I'm using the correct terminology, that Mr. Kaufman had tried soliciting other clubs and this was common knowledge, trying to organize a union.

Q. Had he been over to where you were working? A. Not that I recall, no.

Q. Did you know prior to coming to the Jack LaLanne Health Spa in Little Neck that he had been involved with the union?
A. Yes, I knew that.

Q. You knew? A. Yes, I did.

Q. How did you know that?

* * * * *

1133 REDIRECT EXAMINATION

Q. (By Mr. Monat) Do you recall speaking to Steve Wolf at all about Kaufman and Matinelli at the time you first came there? A. Not specifically about those two individuals. I just asked Steve Wolf about his opinion, how the gym floor was running and if any specific problems I could help him with, and just tying things together and make the staff as productive as possible.

We discussed guest promotion and different future contests we can hold among the members to promote new business coming in, just to generate business.

* * * * *

ANDREW BOSTINTO

was called as a witness and, having been duly sworn, was examined

1134 and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mr. Bostinto, will you state your name and address, please. A. My name is Andrew Bostinto, B-o-s-t-i-n-t-o, 157-24 81st Street, Howard Beach, New York.

Q. Are you presently employed by Jack LaLanne? A. No, I am not.

Q. During what period of time were you employed? A. I was employed from January, the beginning of January, '73 to as of last Monday.

Q. What was your position with the company? A. Men's service supervisor.

Q. How long did you hold that position? A. From January to April of this year.

Q. Did you have jurisdiction as a service supervisor of the Little Neck gym as well as all the other gyms? A. Yes, I did.

Q. Did that supervision cover the period of time at least including June of '73 through February, March of '74? A. Yes.

JUDGE MALLER: Maybe I misheard him. He said he was the men's service supervisor from January '74?

THE WITNESS: January '73.

1135 JUDGE MALLER: That was January, '73?

THE WITNESS: Yes.

Q. Did you have anything to do with scheduling women's hours? A. No.

Q. Did your duties involve scheduling men's hours? A. Yes.

Q. I would like you to refer to a chart which is Respondent's Exhibit 14 in evidence.

Before we get to that let me just advert back for a moment, Mr. Bostinto. Do you recall a conversation with a Mr. Bruce Evans in the summer of 1973? A. Yes, I do.

Q. Who was Bruce Evans? A. Bruce Evans was weekend manager.

JUDGE MALLER: Of what club?

THE WITNESS: Little Neck.

Q. Approximately when do you think you spoke to Mr. Evans? A. I know it was in the summer months, during the summer.

Q. What was that conversation? Tell us what was said. A. He mentioned to me the fact that -- that Richie Kaufman was told to give a class I think because Paulette didn't show up and he refused to give the class. Then Bruce Evans told him that, "If you refuse

1136 to give the class I will send you home." He said that, "Well,

I will do it for you as a favor but I won't do it for the company, but it is not for the company," something to that effect.

Q. Did you take any action thereafter with respect to Mr. Kaufman's calisthenics classes? A. Yes, in a week or whatever it may be --

Q. What did you do? A. I changed his classes from seven to four classes.

Q. Who informed him of the change, do you know? A. At that time it would be Frank Bieler.

Q. Who did you communicate the information to? A. Frank Bieler. Frank Bieler was the floor manager.

Q. Do you know when Bruce Evans left the employ of the company? A. In August, the end of August.

Q. What year? A. Of '73.

Q. Returning to October again of '73, September of '73, there were certain reductions in employees' hours.

Initially Mr. Bob Cash goes from a normal of 30 to 16 1/2 and then down to 15 1/2. Do you recall why that was? A. Yes, during that time they all went back to school with Bob Cash and

1137 the other -- was it Isgro, went back to school so their hours were cut.

JUDGE MALLER: This was in September?

THE WITNESS: This was in September.

Q. Will you point out who else was cut at that time?

Mr. Matinelli appears to go down a few hours in September. Do you recall why? Do you have any recollection of that? A. Not really, not really. Could have been that it was a day off or there was no reason that I would know of him losing time at that particular time.

Q. Turning to October, Mr. Kaufman's hours were reduced at that time, I believe. Do you recall how that came about as well as other employees? A. Yes. In October I was in the gym at Little Neck and I was at the running track and I noticed -- excuse me, the running track is the auxiliary gym to the main gym and we had two instructors on and I noticed that two instructors was over-staffing for that particular location.

There was not enough work for two men. I went back and I spoke to Tom Sansone who is the general manager and Harry Schwartz which is our president and I said I think we have too many men on Mondays and Wednesdays on the running track.

1138 He said to me, "To be honest with you," he said, "I was going to tell you the same thing." Not only that, I said I think we got too many bodies on Tuesday and Thursday.

So what we did is we worked out a schedule and we cut X amount of hours out, and I went to Frank Bieler who was the floor manager and I said to him, "Frank," I said, "We got to cut out so many hours. I want you to work out a schedule so everybody can be evened out."

Q. Do you recall any mention of Joe Isgro at this time? A. Joe Isgro's name was brought up to me by Mr. Schwartz. He said to me, "Andy, Joe felt that his hours were cut unfavorably, he went down to eight hours," he said. "See what you can do and try to give him more hours."

I went back to Frank Bieler and I says, "Try to give Joe a few more hours," and we worked in a schedule.

I think we brought him in on a Sunday which gave him 12 hours and I think he was pretty satisfied with that.

Q. Do your part timers at your gyms always work the exact same number of hours all the time? A. No, no gym works that way.

Q. Is there any fixed formula or scientific method used to arrange hours? A. Not really, no. Not really. We use observation, we use statistics, we use amount of workouts, the amount of business in the gym. There are many things to determine how
1139 many instructors are needed.

Q. Can you give us any examples at your other gyms over the last nine months or so that you worked of others whose hours, part timers, were affected?

* * * * *

A. Yes, most of the gyms, to give you a few, would be Fort Lee there was a Pete Rizzo who worked July and August. He went from 25 hours to 21 hours.

We had Fred Cabriera, his name is Freddie Ortiz and his hours went from 24 to 10 hours.

We had Arnold Rosenstock and in August his hours went from six, 6 1/2 to 16, went back to 9 again.

Q. Where did Rosenstock work? A. He worked the 86th Street and Madison Avenue Spa.

Q. Where did Cabriera work? A. Madison Avenue and then we had Paul Kalura. His hours went from 25 to 21 1/2. He was at Woodmere.

Then we had Steve Quan for Madison Avenue who worked 33
1140 hours and his hours were dropped to 18, so in all gyms hours always fluctuated.

Q. Is there any fixed time that you always cut hours or always increased hours or anything like that that precise in your company? A. No everything depends upon the situat on, depends upon the time.

Q. Did you get around to the different gyms? When you had ten gyms under your jurisdiction I assume? A. Yes.

Q. Did you go around to the different gyms as part of your job? A. Yes.

Q. Do you recall any conversations starting in the fall of 1973 sometime with Mr. Wolf pertaining to Mr. Kaufman? A. Yes, the conversations between Steve and myself occurred in the latter part of November.

Q. Tell us what was said at that time. A. He was telling me he found it difficult in working with Richie Kaufman because they were former friends and there was resentment everytime he gave an order or he gave him specific jobs to do.

Q. Did you have any conversation with him thereafter, do you recall? A. Yes, he spoke to me on occasions and I told him, "Steve, do the best you can, work around him."

1141 Q. Did you talk to Mr. Schwartz at all about this? A. Yes, I did.

Q. What did you say, if anything? A. Well, I told Mr. Schwartz, "Steve is having a little problem in working with Richie Kaufman and what can we do about it?"

Mr. Schwartz says Andy, leave it alone, the election is coming up and probably things will work out after that. Just tell him to do the best he can.

Q. Do you recall a time when Mr. Kaufman's classes were reduced and eliminated, calisthenics classes? A. Yes, that would be probably in February or something. I don't remember the exact date but when his classes were eliminated I realized more than ever before that it is not a good practice to have one man in any one position to give classes and to be dependent upon because nobody

would realize the difference of calisthenics instructors and because of his attitude at that time, that would be back in February, I felt that I would talk him out and I would have Fred Ramos give the classes, who is a very competent instructor, full of enthusiasm and was well liked.

Q. Ramos started working in January? A. That's right.

Q. When did Ramos start doing calisthenics classes?

A. I think almost immediately.

1142 Q. Do you recall if Kaufman stopped doing classes right then, if you recall? A. No, I don't recall.

Q. But to your knowledge do you know if the classes stopped at once or phased out? A. I think they were phased out.

Q. When Frank Bieler left the end of December who was made floor manager after that? Who was brought in as floor manager?

A. Ray Ramos.

Q. Do you have any career pattern or management development pattern as to promotions to management positions in the gym?

A. Yes, we do.

Q. How do you normally fill a floor manager's position?

A. Usually we take the assistant floor manager and put him in the floor manager's position and give him like a trial to see how he acts as floor manager and he can take the responsibility of floor manager.

Q. Why didn't you make Steve Wolf a floor manager?

A. Because the difficulties he was having controlling the floor I felt it would be better to bring in a fellow like Ray and try to give him more direction and help him out and see if he can straighten out the gym.

1143 Q. Do you recall at any time seeing this letter which is Respondent's Exhibit 19 in evidence? A. Yes.

Q. Do you recall when that was brought to your attention and by whom? A. By Mr. Schwartz.

Q. When was that? A. It was a few days after the 7th of February.

Q. Did you have a conversation with Mr. Schwartz? A. Yes, I did.

Q. What was that conversation? A. I said to him well, I says, Richie is having that much trouble with him, what can we do.

JUDGE MALLER: You don't mean Richie.

THE WITNESS: I said to Steve. I'm sorry, I said to Mr. Schwartz, Steve is having problems with Richie Kaufman, what are we going to do about it. What can we do about it?

Mr. Schwartz said to me, "Andy, let things -- tell Steve he has got to live with it, because I think he got directions from his attorney.

Q. Well, that letter refers to a transfer, I believe. A. That is correct.

Q. Was there any mention of transferring him? A. Did I mention?

Q. Was there any discussion about that request in there by
1144 Mr. Wolf? A. Yes, as far as the transfer, to transfer him. This is what I discussed with Mr. Schwartz and we decided to leave things as they are.

Q. There were certain reductions in hours in February I believe it was of '74 which affected Mr. Matinelli and Mr. Kaufman. Do you know how that came about? A. Yes, we had a floor manager who was a floor manager at Flatbush Avenue, transferred over to Little Neck as an instructor, and in order for him to get sufficient

hours we had to take it away from part timers to give him sufficient hours.

So this is why the part timers were cut, which were Phil Matinelli and Richard Kaufman.

JUDGE MALLER: The name of that man?

THE WITNESS: Glenn Tausak.

Q. Did you discuss the matter with anyone about reducing the hours? A. Did I discuss the reducing?

Q. Yes. A. Yes, I discussed the hours with Steve Wolf.

Q. What did you discuss? What factors did you consider in reducing? A. Well, again it was his attitude. He still had friction going between the two and if we had to cut any hours he felt as though it would be best to cut Richie Kaufman.

1145

Q. Did you know a Larry Moskowitz, Mr. Bostinto? A. Yes, I did.

Q. Do you know what kind of person he was? A. Yes, Larry was -- I used the word like a lost soul. He had no father and he used to come into the health food store when I was managing it and we took over like a little responsibility to him because he seemed to need somebody to speak to and we became like a little guardian to him and we used to give him sweat clothes and make him work around the health food store, try to help him out as much as possible.

Q. When was this? A. The first time he came in?

Q. Yes. A. Couple of years ago.

Q. Do you recall any discussion with Mr. Schwartz with respect to giving Mr. Moskowitz hours in 1974? A. Yes, I think Harry promised him that if he graduated and had good marks he would give him a job as an instructor.

So when he did get good marks and he got the job he received the job as an instructor.

* * * * *

1146 CROSS EXAMINATION

Q. (By Mr. Blyer) Mr. Bostinto, you began in January '73 working for the Jack LaLanne Spa organization? A. That's right.

Q. Prior to that were you working at the health food store next door? A. That's right.

Q. Is there an affiliation between the health food store and the -- A. It is a separate corporation.

Q. Separate but aren't there co-owners of both? Do not some stockholders of Jack LaLanne own stock in --

MR. MONAT: I object.

A. Yes.

Q. When you were working in that health food store didn't you on occasion work out in the gym? A. Yes.

Q. Didn't you also attend Mr. Kaufman's calisthenics

1147 classes? A. No.

Q. You never went to Mr. Kaufman's calisthenics class?

A. I don't think so, because I am not much for calisthenics.

Q. I didn't say go often. I say you never attended one?

A. I don't remember, no, no.

Q. Do you remember in the summer of 1973 that you wanted to transfer Mr. Kaufman to Lefrak? A. That is correct.

Q. Will you tell us why you thought Mr. Kaufman -- I'm sorry, wasn't that June of '73? A. June of '73.

Q. Will you tell us why you wanted to transfer him to Lefrak? A. Yes, at that time we needed -- I felt he gave good

calisthenics classes which everybody spoke about and we wanted to send him to Lefrak City to give calisthenics classes and to help out in that particular gym.

Q. Didn't in fact you think that by sending him there he would increase the membership rolls at Lefrak? A. Yes, I thought he would do a good job.

Q. Didn't you in fact think he would increase the membership, that was one of your purposes in sending him there, wasn't it? A. When I send somebody some place I hope he can do a better
1148 job than the person previous.

Q. You still haven't answered my question. Didn't you distinctly feel that by sending him to Lefrak -- A. He will be an asset.

Q. He would increase the membership? A. You can't say increase the membership. If I knew what would increase the membership it would be an asset.

Q. Do you remember what you testified to in the prior unfair labor practice case involving this employer? A. Yes, I know what I said.

Q. Didn't you say in that proceeding that the reason why you wanted to send him there was you felt he would pick up sales? A. If I said that then I said it.

Q. Isn't that true? A. Well, word for word I wouldn't remember but I know I sent him there for benefit for the club. If it means that, that is the answer.

Q. To pick up sales? You felt that he was such a good instructor? A. That he would be good for the club, right.

Q. Thank you.

* * * * *

1152 Q. Do you know when the school semester starts at New York Tech? It is located in Westbury. A. No.

Q. You say with regard to Mr. Cash and Mr. Isgro that their hours were taken away at the time or reduced at that time because of their obligations to school? A. That is correct.

Q. Did you know that Mr. Matinelli was also going to college at that time? A. Yes.

Q. Were his hours reduced at that time? A. No.

Q. Mr. Kaufman, were his hours reduced at that time?

MR. MONAT: Which time?

MR. BLYER: September 1973.

A. No.

Q. Mr. Kaufman was a little later, in about October of '73 that his hours were reduced? A. Yes.

1153 MR. BLYER: Let me have these marked, please.

(Documents marked respectively General Counsel's Exhibits 9A and 9B for identification, of this date.)

MR. BLYER: Your Honor, I have chosen these and I think there is an explanation needed here.

Of course there is on in between, 9/7/73, but since the normal week hours that a person is scheduled and the available hours are not the same, for those individuals on 9/7 and therefore we cannot tell from the 9/7 payroll sheet what days Mr. Cash and Mr. Isgro were working prior to being changed.

I have chosen the one closest to the change that does show what days Mr. Cash and Mr. Isgro were working prior to the change and I am now going to compare it with the one which reflects the first week of the change. I hope you understood that.

JUDGE MALLER: I understood.

MR. BLYER: Thank you.

Q. With regard to Exhibit 9B, the payroll sheet ending the week 8/31/73, did Mr. Isgro work on Sunday that week? A. Yes, he did.

Q. How many days was he scheduled for that week?

JUDGE MALLER: How many hours?

1154 Q. How many hours, I'm sorry? A. 21 1/2.

Q. How many did he actually work? A. 21 1/2.

Q. I show you Exhibit 9A. How many hours is he scheduled for that week? A. 9 1/2.

Q. How many did he work? A. 9 1/2.

Q. Did he work on Sunday? A. No.

Q. On the week ending 9/14/73? A. He did not.

Q. Did he go to school on Sundays? A. No, he did not.

Q. Going back to the exhibit marked 9B, the week ending 8/31/73, did Mr. Isgro work on Monday nights? A. Yes, he did.

Q. When you changed his hours did you permit him to continue working on Monday night? A. No, he did not.

Q. He was not permitted to work on Monday night? A. I didn't say he was not permitted. I say he wasn't working Monday night.

1155 Q. Did he go to school Monday night? A. I don't know.

Q. With regard to Wednesday, for the week ending 8/31/73, prior to the change? A. Excuse me, Monday night, I'm looking at the schedule over here. Okay, all right, I'm sorry.

Q. Now, looking at General Counsel's Exhibit 9B for Wednesday nights, prior to the change was Mr. Isgro working Wednesday night? A. Yes, he was.

Q. After the change was he permitted to work Wednesday night? A. No.

Q. Do you know if he went to school on Wednesday?
A. No, I really don't.

* * * * *

1158 Q. If Mr. Kaufman was such a problem and perhaps Mr. Matinelli and Mr. Wolf deserved so much to be promoted why did
1159 you discharge Mr. Kaufman at that time? Did you know he already had two warning notices? A. Yes, I did.

Q. Why didn't you fire him? A. Well, that is the thing we didn't want to fire him because we didn't want to have any more problems and we had to bend backwards, otherwise normally he would have been fired.

* * * * *

1160 Q. You also refer to the fact that Kaufman had a bad attitude and that is why you decided to cut his hours at this time. A. Yes. If hours had to be cut it would be preferable to cut Kaufman's hours.

Q. But you cut Mr. Matinelli's too, isn't that correct?
A. Yes.

1161 Q. Was there anything else he was doing wrong other than -- excuse me, anything else? A. Again his enthusiasm was not into the club like it was previous, and it was shown not only on the gym floor but in attitudes towards Steve Wolf.

He felt he had trouble controlling them.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Monat) Did anyone ever tell you that Phil Matinelli was or had signed a card for the union? A. No.

Q. Or was active in the union? A. No.

Q. Did Steve Wolf ever tell you that? A. No, he didn't.

Q. Did you know that Matinelli was active for the union at any time? A. I found out just recently.

Q. What do you mean recently? A. I think somebody said when he was here he testified here.

1162 Q. But I'm talking back in -- A. No.

Q. Through March of '74? A. No, no.

Q. Did the hours work out, giving those hours to that kid named Moskowitz? A. I think Moskowitz got extra hours.

Q. What happened with Moskowitz finally? A. He was let go.

Q. Why do you know? A. Well, because of immaturity, because he came in and said to me, "Andy, I think they are picking me."

I said, "Larry, that is your problem, you think everybody is against you. Don't you see we are giving you a break? Try to do the best you can," and he thought everybody was picking on him.

He was a little immature and we gave him a chance but it didn't work out.

* * * * *

RECROSS EXAMINATION

Q. (By Mr. Blyer) Mr. Bostinto, you were here on the November 5th proceeding, you testified in this proceeding, November 5th? A. Yes.

Q. Don't you recall during the course of that testimony coming
1163 out that Mr. Matinelli had given out membership cards to sign and in effect had signed the card himself for the union? A. To be honest with you I don't remember.

Q. Do you know that he was supposed to be an observer at the election? A. I did not know.

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1164

16 Court Street,
Brooklyn, New York,
Friday, August 16, 1974.

* * * * *

1166

HARRY SCHWARTZ

was called as a witness, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Monat) Mr. Schwartz, what is your name and address? A. Harry Schwartz, 1680 Bay Boulevard, Atlantic Beach.

Q. You are the husband of Mrs. Schwartz who has testified? A. That is correct.

Q. What is your position with the company, Jack LaLanne? A. I'm an officer of the corporation.

Q. What office? A. President.

Q. Was there a time when your offices were located at the Little Neck Spa? A. Yes, we were located there until mid March of this year.

JUDGE MALLER: Off the record a moment.

(Discussion off the record.)

1167

JUDGE MALLER: On the record.

Q. You say it was March that you moved to Lake Success? A. That is correct, in March.

Q. Would you describe where your offices were with relation to the rest of the facilities at Little Neck? A. Well, the

main office, the administrative office was right off the main lobby of the gym.

My office had two entrances. One right leading into the lobby of the gymnasium and the second entrance from my office goes into a small anteroom within the complex of the offices.

Also in that office we had another exit leading out the back which I can go through to the running track or out the fire exit.

As far as distances from my office to the gymnasium, it is about 35, 40 feet, and at the back entrance into the running track is about 18 feet, approximately.

JUDGE MALLER: There has been reference here to a running track. So that the record will be clear what is the running track?

THE WITNESS: Well, there are three exercising areas at the Little Neck branch. The first area is the main gym.

Adjoining it is what we call a ballet room where the ladies have
1168 their floor classes and the men also have their floor classes and yoga classes, and adjoining both those rooms is the running track area which has a built in banked running track, and in the middle of that we have additional equipment for exercise.

It is used primarily for men.

JUDGE MALLER: About how big is this running track.

THE WITNESS: Running track is 80 by 26.

Q. Feet? A. Yes. I built the gym. That is why I know the measurements.

Q. That is feet though? A. Yes.

Q. Is that circular? A. The running track?

Q. Yes. A. Well, more oblong than circular.

JUDGE MALLER: Oval?

THE WITNESS: Oval, that is what I was looking for, thank you.

Q. Did you just stay in your office all the time when you worked at Little Neck? A. No. I frequently walked through the Spa many many times during the day.

The health bar was there also located, about 15, 20 feet
1169 from my office, so I frequented that quite often as well.

Q. Where is the health bar? Is that a store which you call the health bar? A. Yes, it is a health foods store.

Q. Where is it located with respect to the lobby and the rest of the gym? A. As you enter my office it was to the exact left. They were to the exact right.

Q. There is a door off the lobby? A. Yes, as well as a door off the street.

Q. If members or personnel of Jack LaLanne wanted to get to see you would there be any difficulty in that? A. No, none whatsoever.

Q. In or about July of 1973 do you recall any discussion with Mr. Bruce Evans? A. Yes, I spoke to Bruce Evans on a weekend. It was a Saturday, and he had a problem at the Little Neck branch with an employee that falsified a time sheet for the second time.

He had told me the disposition of what he had done to the employee. It was Paulette Anderson, and his relationship at the time by trying to get somebody to take over the floor classes that she was scheduled to give for that day and he had asked Richie Kaufman if he would be kind enough to give the next class and
1170 Kaufman utterly refused, and Bruce asked him again and still insisted.

Then Bruce said "If you don't give the classes I'm going to send you home."

Kaufman answered to him, "All right, Bruce, I will do it as a favor to you but not for the company."

Q. This is what Bruce Evans told you? A. That is correct.

Q. Did you have occasion to speak to Mr. Andy Bostinto after your discussion with Bruce Evans? A. Yes, I asked him to call Bruce and speak to him. I didn't speak to Andy until the week -- it was a weekend at that time.

I asked him to talk to Bruce, get the facts again and please do me a favor, don't allow any further person to be in a position where they are the sole person to give out floor classes for us, and do something about changing the floor class position, not that he should have that many classes.

Q. Have you ever had occasion --

MR. BLYER: Excuse me, may I have that answer back, please Your Honor?

JUDGE MALLER: Please.

(Whereupon, the last answer was read back by the Reporter.)

1171 Q. Aside from Little Neck for the moment, have you ever had any occasions where customers became unhappy about some move you made with respect to an employee? A. Yes. I had a fellow by the name of Joe Arsoni working for me.

Q. Where did he work? A. At the Madison Avenue Spa.

Q. What did he do? What was the job? A. He was the floor manager there and he was giving mens floor classes and eventually we let him give floor classes on ladies day. They weren't mixed, they were just primarily for ladies and then when Anita needed him in another spa and I moved him out I started getting a lot of static from the members.

At that time I said to myself I won't allow anyone person to give any floor classes be the sole person because of any time you make a transfer like that I have problems.

I also had the same problem when we had Phyllis Cooper giving the yoga classes at Little Neck. When Phyllis Cooper left to go into her own business she gave me ample notice and we put a new girl in and the members protested again and then we put this redheaded young lady in and I don't recollect the name.

Then, about a year and a half later the redheaded lady left

1172 and Phyllis Cooper came back and the members protested because they wanted the redheaded lady, so I now find if at all possible not to have one person be the sole giver of floor classes, because otherwise you are at the person's mercy if there are any problems and the customers get resentment.

* * * * *

1173 Q. Do you recall a conversation with Mr. Bostinto in approximately November of 1973 where Mr. Kaufman's name was mentioned?

JUDGE MALLER: Mr. who?

MR. MONAT: Richard Kaufman.

A. Yes, Andy Bostinto spoke to me many times during the course of the week but sometimes in mid November, the latter part of November he discussed Richard Kaufman's attitude and he felt that he wasn't doing the job and he asked me what we can do about it.

I said, "All you can do is give the man written warning, you can't do anything else beyond it."

He said, "Why not?"

And I said, "Very simple. I spoke to my attorneys and an

1174 action on our part towards anybody involved in union organization could possibly be set aside in an election, given a right to have an election," and I said, "You just have to live with it. Talk to the man but don't discharge him."

Q. Incidentally, did you talk to Joe Isgro in October or so, do you recall? A. Yes, Joe Isgro came into my office I guess sometime in the early part of October. One evening he bounced in and he asked if he could see me. I said, "Sure, what is on your mind, Joe?"

He felt it was totally unfair that he only had 8 hours and everybody had more hours, could I get him more hours.

So I said let's take a look and see what I can do for you, and I spoke to Andy Bostinto and within a day or two I said, "Andy, do me a favor, please get this guy some more hours, I would appreciate it."

He said, he would see what he could do and thereafter I understand he did get more hours.

* * * * *

Q. Do you recall with respect to the period around the election whether you had any incidents of damage to property or

1175 anything of that nature? A. Yes, we had.

Q. You did? A. Yes.

Q. During what period of time, approximately? A. Prior to the election. I would say about we had a little bit in November and it picked up the latter part of November right before the election, about two, three weeks prior to the election.

Q. What occurred?

MR. BLYER: Objection, Your Honor. I should have objected earlier but there is no relevance to this type of testimony.

JUDGE MALLER: Unless you can tie it in with anybody involved in this case I don't think you can go into that.

MR. MONAT: The only tie in, Your Honor, is that there is a later conversation where Mr. Kaufman allegedly was looking for

Mr. Schwartz' address and the testimony I will elicit will show that Mr. Schwartz found it rather unusual and disturbing that when he learned that Mr. Kaufman was walking around the gym looking for his address and that this background was somewhat in his mind with respect to this and he ultimately did talk to him in a conversation which begins with the matter of the address.

Mr. Kaufman himself testified to the conversation.

1176 JUDGE MALLER: To that question you can go into but the matter of damage to properties not properly before me.

MR. MONAT: The only reason I am bringing it forth, Your Honor, is to show at least part of the reason why Mr. Schwartz would be upset about this man looking for his address, particular because Mr. Kaufman was obviously one of the leaders of the union campaign, associated with this union.

JUDGE MALLER: No, I can't let you go into that.

MR. MONAT: The union which we regarded as a bad union.

JUDGE MALLER: You are entitled to your opinion.

MR. MONAT: Background and record.

All right.

My point on here would be in conformance with my prior offers of proof, Your Honor.

JUDGE MALLER: Very well, it is rejected.

Q. Do you recall a conversation with Stephen Wolf approximately a week prior to February 7th, Mr. Schwartz? A. Yes.

Q. How did that conversation come about? A. I was in one of my little trips out of my office and I saw Stephen in the health food bar and I asked him how things were.

1177 He said -- well, the way he said it it sounded like he had problems.

He said so so or something along that line. So I said, "You got any problems, Stephen?"

He said well, and he was a little hesitant.

I said, "Come on, take a health drink," and we went to my office and sat down.

"What seems to be the problem?"

He said he was having problems on the gym floor with Kaufman.

So I said, "Did you discuss with Andy?"

He said awhile back but not as of late.

So I said, "Why don't you do me a favor, why don't you talk to Andy about it?"

He also asked me -- I asked him what he would like me to do, would he like me to fire the man and he said no "I don't want that."

And at that time I said, "Well, best you talk to Andy about it, and speak to Andy."

Then he mentioned something, he will be going on vacation, he wouldn't see Andy and I said, "Why don't you drop him a note?" That was the end of the conversation.

JUDGE MALLER: You know my ruling is clear, you seem to have switched to another subject. My ruling related only to damage to property. You adverted to a conversation which Mr. Schwartz
1178 had with Mr. Kaufman. I did not prevent you from going into that.

MR. MONAT: I understand that, Your Honor, and we will be going into it.

JUDGE MALLER: Very well.

MR. MONAT: Thank you.

Q. Mr. Schwartz, did there come a time when this document, which is Respondent Exhibit 19 was brought to your attention?
A. Yes.

Q. How did that come about? A. A few days after I had spoken to Stephen Wolf -- I leave my door open to the inner office, and he had asked somebody where Andy Bostinto's box was.

Right behind him there is a group of mailboxes where we have our own slots.

Q. Who asked?

Steve asked one of the girls in the front and I heard his voice out there because I was puttering in the office, and I walked out.

"How are you, Stephen?"

And he had this little letter in his hand. He said he was going on vacation and he was wondering, he would like to get the letter to Andy.

So I said, "I will be more than happy to take it from you, I
1179 will be talking to Andy during the week and --" and I took the letter from him.

Q. Talked to Andy? A. Bostinto.

Q. What was your conversation? A. I talked to Andy about it, yes, Andy Bostinto. I spoke to him in reference to it.

Andy said, "What are we going to do about it?" I said, "Nothing, the man had two warnings already and the third warning means discharge and discharge means going down to the National Labor Relations Board with lawyers, more costs, more aggravation, more of my time. Talk to the man and see if you can straighten him out."

He once was a good man. Maybe all he needs is a good straightening out. I said, "Leave it lie." That was the end of the conversation.

Q. Do you recall receiving the call from your uncle one Sunday? A. Yes.

Q. When was this, as best you remember? A. Well, it was after this incident, considerably after it, so I would have to place the date in the latter part of February or very early in March, somewhere in that area.

My uncle called me.

JUDGE MALLER: Who?

1180 THE WITNESS: My uncle.

JUDGE MALLER: What is his name?

THE WITNESS: Sam Segal, and Uncle Sam called me and he spoke momentarily to my wife and then he said he wanted to talk to me.

He said, he was at the gym today and a very strange thing happened. So I asked him to relate to me and he had said that while he was in the locker room he overheard a fellow that he recognized as an instructor asking for me address from the locker attendant.

So I said well, it didn't make any sense or didn't penetrate my head.

He said, "Just the way he asked for it, Harry, it didn't sit well." So I said all right, I will find out what it is about. I didn't pay much attention.

I let another hour or so go by and it sort of -- why would someone ask the locker attendant for my address? I said let me call and find out who it was.

I spoke to Frenchy.

Q. Who is Frenchy? A. Frenchy Osborn is a locker attendant at the Little Neck branch.

I spoke to Frenchy Osborn and I said, "Frenchy, my uncle Sam Segal was in the gym a few hours ago and he tells

1181 me that he overheard a conversation of an employee asking you for my address. What is that about?

So he said, "Well, Richie Kaufman had asked for your address," and I said, "Why was that?" He said, "I don't know."

I said, "Did you give him my address?"

He said, I don't know it.

I said, "Is this all there is to it?" He said, "That is all there is to it. I didn't understand why he asked me but I didn't have your address." That was on Sunday.

It stayed on my craw and I said why would the man want my address. I see him at least once a week in the gym. We pass each other in the lobby or the gymnasium.

So Tuesday he was scheduled to be on. I left word either with Ramos or Steve Wolf, Ray Ramos or Steve Wolf that when Richie Kaufman came in, to please bring him to my office.

Q. Did you have occasion to see Mr. Kaufman? A. Yes, Richie came into see me.

Q. When was this, what day of the week, do you recall? A. It was a Tuesday.

Q. Did you have him come in right at the outset when he first came in? A. Yes, as soon as he came on the premises.

Q. Did you have a conversation with him? A. Yes, I did.

1182 Q. Where was the conversation? A. In my office.

Q. Who was present? A. Just myself and Richie.

Q. What did you say to Richie and what did he say to you? A. I did most of the talking. I asked -- when Richie came in the door I greeted him. I asked him to have a seat. I asked him how he was feeling. He said he was feeling fine. I said that is good.

I asked him if "You like the job here at Little Neck," he said he did and I said, "Well, that is good."

I said, "Now tell me why would you ask anybody for my address?"

No, I said, "Why do you want my address?" And he told me that some of the members wanted to send me something.

I said, "What is the thing that they want to send me?"

He said, "A petition."

I said, Why don't they send it to me here?" I said, "They know my office is here or slide it under the door or hand it to me?"

He said, "Because they felt this way if we send it to your home you will read it."

1183 So I said, okay, Richie, do me a favor, let's forget the petitions. Let us forget that, let us go and do a good job.

He said, "While I have you here I have been wanting to talk to you," this is Richie Kaufman talking, "Since the end of the year but I didn't have the opportunity. I want to tell you how sorry I was about what transpired. I didn't think it would be that big of a thing."

And as he continued talking I cut him short. I said, "Richie, do me a favor, just forget about it." And I said, "But while you are on the subject, you made a statement on one of our meetings down at the NLRB and your lawyer went over that point again and again.

It is why you got 3.50 an hour and as your positions changed from floor manager to instructor to assistant floor manager or et cetera, whatever the moves were vertical as time kept on changing positions, why you continue with 3.50.

I said, it is very simple, Richie, I would like to get the record straight.

"I told Andy Bostinto when he took over the position and he was replacing you, to make sure that you kept your 3.50 and you got carte blanche."

At that time, I said to him, "Richie, do me a favor, go out
1184 there and do a good job, forget last year, it is water under the bridge." And that was the extent of our conversation.

Q. Did you mention Paulette Anderson at all in that conversation? A. No.

Q. At your various gyms do you have any fixed way in which you schedule part-timers? Is there some rigid formula, some scientific formula that you use? A. No, no formula.

Q. How is it done? A. Well, I have been in the gym business for 20 years. I staff a gym according to what I think the needs of the gym are. If I see that it needs more I add more. If I see I need less I subtract.

That means whether it is full time or part-time.

Q. Do you personally get around to your gyms? A. Yes, I do. Not as frequently as Andy Bostinto or Tom Sansone did but I get around to the gyms.

Q. There has been a lot of talk about contests or promotions, et cetera.

Tell us about that, Mr. Schwartz? Do you ever have promotions, contests, advertising? Tell us what you do. A. Yes, we have contests and promotions going on all the time. Though we are a fitness business, we are sales oriented and the market fatality rate
1185 in my particular business is unbelievably high and if you don't promote, if you don't give good service you are not going to be around.

So we have promotions going all the time.

* * * * *

1186 We run other promotions as well as was brought up in the courtroom.

We have one month guest passes which we sent out to all our members, 40,000, 50,000 of those distributed throughout the greater New York area expiring December 15th.

That is that green card that you have there in your hand.

Then, right after that for a two week period which are deadist, December is our quietest, not as far as volume, in gross, but as far as workouts in the gym floor because of the shopping, school vacation, the holidays, the various kinds of holidays and that time of the year, New Year, approximately and it is the Christmas

1187 parties and the gym just turns into empty ground. People just don't come into it.

Q. May I interrupt? I take it you wouldn't agree with some of the testimony here that at the end of December the gym was packed? A. No, the gym doesn't get packed until January with the New Year's resolutions. That is when it becomes devastating. We can't accommodate what takes place in January. They just pack right in. Everybody made a New Year's resolution, we had that one month guest pass.

We followed it up with another two week pass which counsel has shown, not that one.

MR. MONAT: I would like to mark a document as Respondent's Exhibit 20, I believe.

JUDGE MALLER: Yes, 20.

MR. MONAT: This document consists of a green envelope, a green card and a letter.

(Documents above described marked Respondent's Exhibit 20 for identification, of this date.)

MR. MONAT: It also consists of a color brochure.

Q. Mr. Schwartz, will you refer to this document which is Respondent's Exhibit No. 20.

Were all those documents sent in the green envelope by
1188 Jack LaLanne, do you know? A. Yes, it was sent in a white envelope in which this was all encased into.

That is the green envelope is what is supposed to give the memorandum as a gift package and it was sent to every existing member on our rolls that we had a known address.

Q. There is a card enclosed, is there not? A. Yes, one month card.

Q. Who could this card be given to? A. That is given to a friend, an adult friend of any member to use for one month, expiring December 15th. We sent this out in early November. I believe November the 12th.

Q. Could that card be used by a friend of a member beyond December 15th? A. Not this card.

Q. Was the December 15th date on that card ever extended? A. No, it wasn't.

Q. Now, there is a color brochure there. When was that offer to -- A. December 15th.

Q. Was that extended? A. Yes, it was.

1189 Q. What is that brochure about? A. It is about renewing, members renewing.

Q. And what was extended, the rate, the lower member rate? A. Yes, that $88 was extended until January 1st or December 31st.

MR. MONAT: I would like to offer that document in evidence.

MR. BLYER: Has it all been marked as one document?

MR. MONAT: Yes.

MR. BLYER: No objection, Your Honor.

JUDGE MALLER: Very well, I can't see what you want it for but there is no objection. I will receive it as Respondent's Exhibit 20 in evidence.

(Respondent's Exhibit 20 for identification received in evidence, of this date.)

MR. MONAT: There is another card I would like to mark as 21.

(Document marked Respondent's Exhibit No. 21 for identification, of this date.)

Q. What is this card, Mr. Schwartz? A. This is a guest pass that we gave out with a little Christmas box to be utilized any time that we gave this out for a one month period of time and the expiration date on that was January 31, 1974.

1190 We gave that to any new member who enrolled during the month of -- started right after Thanksgiving, started some -- from Thanksgiving on through December 31st and we gave out little package.

It was in a little gold box and that was in it to give to a member as a Christmas present.

Q. Any new members? A. New enrollments only, only new members.

MR. MONAT: I would like to offer that in evidence.

MR. BLYER: No objection.

JUDGE MALLER: There being no objection Respondent's Exhibit 21 is received.

(Respondent's Exhibit 21 for identification received in evidence, of this date.)

Q. Did you do anything around Mother's Day? A. Yes, Mother's Day was also something of the same type. We also put a

guest pass in the Daily News for all New York City to come to the gym from December 26th to January 1st, a one visit guest pass.

Q. And over the year do you ever advertise in the papers? A. Yes.

Q. Only one week out of the year where you advertise anyone time? A. No, we advertise radio, TV and Newspapers and all

1191 large newspapers as well as the local papers.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

Q. Is there any advertising done throughout the year, Mr. Schwartz? A. Yes, we have quite a large budget.

Q. Do you have other promotional things besides these various guest passes and so on we mentioned? A. Yes, we have promotions going on inside as well as outside.

We have a buddy board. What we do is we give members various prizes, anywhere from blenders to transistor radios, three months free, a leotard, sweatsuits, gym bags as a means of promoting people.

Q. Do you have something called two for one? A. Yes, we have that. Out two biggest promotions come in our worse periods of the time.

We have a two for one in the summer which we are right now and we have our price change which usually takes place in December in conjunction with all our renewal drives.

* * * * *

1192 MR. MONAT: I would like to mark a document, two checks, one to Rolinda Antone as Exhibit 22a and one to Debra Caron as Exhibit 22b.

(Documents above described marked respectively Respondent's Exhibits 22a and 22b for identification, of this date.)

Q. Mr. Schwartz, are these checks from the official records of the company? Are those official checks? A. Yes, they are.

Q. Are they payroll checks? A. Yes, they are.

Q. To whom are they made out? A. To Debra Caron and Rolinda Antone.

JUDGE MALLER: Which is which?

THE WITNESS: Debra Caron is for net payable --

JUDGE MALLER: What is the number?

MR. MONAT: Exhibit 22a is Rolinda Antone and 22b is Caron.

JUDGE MALLER: Thank you. Go ahead, please.

Q. What is the date on the check, Mr. Schwartz? A. Pay date 12/19/73.

Q. On the check? A. Yes.

Q. When does the payroll period end? A. Friday preceding that date.

1193 MR. MONAT: I would like to offer those documents in evidence.

MR. BLYER: No objections, Your Honor.

JUDGE MALLER: Very well.

MR. MONAT: May I substitute copies of any originals I put in including these checks?

MR. BLYER: Yes.

JUDGE MALLER: There being no objection Respondent's Exhibits 22a and 22b are received in evidence.

(Respondent's Exhibits 22a and 22b for identification received in evidence, of this date.)

Q. Mr. Schwartz, would these checks have a normal payroll deductions, whatever those may be? This is less deductions?
A. I'm not a payroll clerk.

Q. So normally would checks be issued minus Social Security or whatever? A. Well, there is another stub, you see, that says --

Q. I'm not asking how much, but the amount of the check would be net?

* * * * *

1194 CROSS EXAMINATION

Q. (By Mr. Blyer) Mr. Schwartz, there came a time sometime during the summer of 1973 that the number of calisthenic classes Mr. Kaufman was teaching was reduced from seven to four; do you recall that? A. Not the specific time but I understand they were reduced.

* * * * *

1196 MR. BLYER: His work, was it superlative?
A. It wasn't for me to determine whether his work was superlative which is a strong adjective which deserves an Academy Award. I just couldn't say his work was superlative.

Prior to that time his work was always satisfactory above and beyond.

Q. Wasn't it more than just satisfactory? A. To me it was but I wasn't on the gym floor. I always liked Richie very much.

Q. Was there anyone else who told you differently about his work? A. At that time?

Q. Yes. A. No.

Q. In fact, wasn't Mr. Bos into considering transferring him to Lefrack at that time because he was considered the instructor at Little Neck who could best boost your sales at Lefrack? A. No. Partially true because he wanted to move him there because

1197 he was good at floor classes and he felt that Lefrack could use a little shot on his off days to stimulate business as was testified here.

Q. Didn't you think it was a little bit strong medicine to reduce his calisthenic classes from seven to four just because, without inquiring of him just really why he initially refused to teach that class? A. No. A floor class is not candy. We don't give that away as a reward. That is part of a man's duty and as I testified a little earlier I didn't want to be hung out to one person.

I learned my lesson previously but I had forgotten it. That reminded me of it.

Q. What was the explanation? Are you saying there were two factors now that caused you to reduce? A. Yes.

Q. Two factors now? A. Yes, I believe I testified to that.

Q. So the first factor was that he initially refused to give a calisthenic classes? A. His attitude toward Bruce Evans, in his request to give a floor class when the company needed it and, two, not to have our heads held to one person giving all the classes.

1198 Q. Would you explain why afterwards, at least the second reason afterwards he was never given or permitted to teach a calisthenic class except for that one instance with Pete Trainer?

MR. MONAT: I object.

A. No.

MR. MONAT: I object, Your Honor.

JUDGE MALLER: What is the objection?

MR. MONAT: The question is not clear. The question assumes that thereafter --

MR. BLYER: I will rephrase the question.

MR. MONAT: -- he never had a calisthenic class.

MR. BLYER: I will rephrase the question.

Q. Isn't it accurate, Mr. Schwartz, that even after his classes were reduced in the summer of '73 that it wasn't until January of '74 that you had any other male instructor give those coed classes? A. I don't really know that. I don't know if anyone gave those coed classes.

Q. Don't you think you should know because you just told me one of the explanations for taking away his calisthenic class in July of '73 was that you didn't want to get hung up? A. No, somebody else took over the class, whether it was a girl or a boy or who it was, I don't know who it is.

1199 Q. You don't know who it was? A. No. The girls rotate.

Q. I'm asking you did you put on any other male until you took away the rest of his calisthenic classes? A. I don't know.

JUDGE MALLER: There has been some testimony I believe that coed classes are conducted, calisthenic classes are conducted only by men.

THE WITNESS: That is not correct.

JUDGE MALLER: That is not correct?

THE WITNESS: This is absolutely not correct.

* * * * *

1201 Q. Don't you remember the women complaining about the fact that they were all men classes? A. No, no. Some of the men complained because there wanted to get in on the ladies classes.

Q. At the time you reduced Mr. Kaufman's classes in the summer of '73 from seven to four he was the only male teaching those classes; is that right? A. Teaching the classes there at that time, that is correct.

Q. With regard to females did you have females teaching the class at that time? A. They teach classes all the time.

* * * * *

1203 Q. But there were in fact women teaching coed classes in the summer of '73? A. I don't know that to be a fact.

Q. I would think you would know it if you were so concerned
1204 about having someone or no one to replace Mr. Kaufman when in the summer of '73 you reduced his classes from seven to four just in case he left. Don't you know? A. Is this a question or a statement?

Q. You told us that one of the reasons you reduced his classes from seven to four was to make sure that if he left you wouldn't be caught without anyone? A. That is correct. One person should not give all the classes. It should be rotated out just as in ladies.

Q. Don't you know for a fact who else was giving coed classes at that time? A. No, I don't. There weren't that many, by the way. I do want you to know that. I don't think there was more than maybe five, six tops.

Q. Five or six? What other people were giving coed classes? A. No, five or six coed classes.

Q. Well, he wasn't teaching them all, was he? A. All the coed classes?

Q. Yes. A. I don't know if any of the girls gave them during the week. Again, as I said earlier to you, I don't know if he

gave all coed classes. I believe some of his classes were all men.

Q. That being the case do you think he was giving all the
1205 classes, all the coed classes? A. Do I believe he was giving all the coed classes? No, I don't believe he was giving all the coed classes but I'm sure one girl, two girls may have been giving coed classes.

Q. In October of '73 Mr. Kaufman's hours were reduced; is that correct? A. Yes.

* * * * *

1206 Q. The question is why was Mr. Kaufman's hours reduced in October of 1973? A. I believe Mr. Kaufman as well as other instructor's hours were reduced for just reasons of scheduling, either abundance of instructors as the case may have been and evening of the hours. I believe he was reduced four hours or something.

* * * * *

1207 Q. At that time you said you were looking to -- what was it again? To do what by cutting his hours? What were you hoping to accomplish? A. I wasn't hoping to accomplish anything by cutting his hours, per se. What your question is, why he lost four hours?

Q. Yes. A. Part-time people, hours are changed very frequently throughout the entire organization. What reason they lost four hours or eight hours is not within my realm of knowing each particular one.

Q. So you don't know the explanation for why Mr. Kaufman -- A. Well, I was sitting here in the court and I'm aware of the

explanation which they gave which is on the record. I did not have anything to do with their changing the hours because they have to change the hours.

1208 Q. I think you testified to something in October, '73 of noticing a lack of cleanliness in the Little Neck location and an abundance of employees? A. Yes.

Q. Did you tell anyone in management about that? A. Yes, I told Andy Bostinto and Tom Sansone.

Q. Is that what led to Mr. Kaufman being reduced? A. I presume so, but not per se Richard Kaufman. The gym, not him specifically. It is the gym.

Q. You said you cut someone? A. Not cut someone, get rid of abundance of hours and get the other boys working before they get cobwebs all over the place.

Q. This is the time you gave Mr. Isgro additional hours when he came into you and asked you for more hours? A. Yes.

* * * * *

1210 Q. During the course of that conversation about what to do about Richard Kaufman you told Mr. Bostinto to do nothing; is that right? A. That is correct.

Q. Is it correct that the reason - A. Nothing -- go ahead.

Q. Is it correct that the reason why was that you were afraid of an NLRB proceeding? A. That is correct.

Q. When do you place this conversation with Mr. Bostinto? A. Sometime in February, right after the letter, a few days after the letter.

* * * * *

Q. There was nothing automatic, was there, about a third warning notice causing a man to be discharged? A. What do you mean by automatic?

Q. I mean just because a man was given a third warning notice, he doesn't have to be discharged. There wasn't anything written about that? A. Nothing written. I don't know if it may be in the rules but it is an accepted company policy if a person is giving us a hard time and if it wasn't for the circumstances he would have been thrown out.

* * * * *

1212 MR. MONAT: Let the record show Mr. Kaufman did not file any charges in this matter.

JUDGE MALLER: No evidence that he did, I assume.

* * * * *

Q. Had anyone ever been discharged with the issuance of three warning notices? A. I believe they have and you have to ask one of the service supervisors that question because I don't know. They know who was terminated for warning notices.

Q. You think there were but you don't know who they were? A. No, I don't.

* * * * *

1215 Q. When you had this conversation with Mr. Kaufman shortly thereafter relating to why he was asking for your address, you made mention of the fact that you spoke with him about a statement he made at an NLRB meeting. Those were your words. A. That is correct.

Q. What were you referring to when you said an initial meeting? A. Because I stated in my earlier testimony that after Mr. Kaufman made the apology --

Q. No, no, what I am asking you, what did you mean by the NLRB meeting? A. We had a hearing, I should say.

Q. Was that the R case hearing? A. The R case, yes.

Q. You made some mention about Mr. Kaufman, what did you tell Mr. Bostinto about his business about Mr. Kaufman keeping the pay rate of $3.50? Didn't that come up in this conversation? A. Yes, it did.

1216 Q. Would you tell me just how that came up? I didn't follow that. A. All right. At the R case the lawyer that was sitting in your particular seat, Mr. Grogan, spent a considerable amount of time going over that he made $3.50 an hour back and forth as he changed his various positions.

Q. And he stayed at $3.50 an hour? A. Yes, he did. He went from floor manager, I believe it went along the lines he was getting $175 for 55 hours and then when he was cut down to less hours because he had to go back to school or something, it was 35 or 30 hours at 3.50 an hour and then he became floor manager, assistant floor manager and then back to floor manager, and they couldn't understand why he kept the 3.50.

Richie Kaufman seemed a little bewildered why he kept the 3.50 so I wanted to enlighten him to this fact, being that he brought up the situation himself.

Q. What was the explanation of why he kept the 3.50? A. As I stated --

MR. MONAT: Your Honor, objection. I want to know if it was something said or the explanation that Mr. -- something that was actually said or the explanation of Mr. Schwartz' mind.

MR. BLYER: The latter, not something that was said.

1217 JUDGE MALLER: He wants your basis for your understanding of why you kept him at that.

THE WITNESS: Why I kept him at 3.50? Because at that time he was my floor manager and he was doing a very fine job for me.

Q. When he was, I guess demoted to an instructor you kept him at 3.50? A. That is correct.

Q. And is this because he continued to do a good job for you? A. Yes.

Q. At no time did you reduce his pay? A. Never.

Q. Do you remember when he ceased being a floor manager? A. Well, considering I read the testimony to refresh my memory last night, so it would be very easy for me to do and it was a fellow named Larry, I don't know his last name, took over as floor manager and he went back to instructor.

Then after that the fellow Larry left and he became acting floor manager again.

Then I believe Steven Wolf and Bieler came in the season and then he became an instructor again.

Q. This was -- A. In January of the balance of the year, '72-'73 year.

1218 Q. Is when he ceased being a floor manager? A. In that area, yes. I can't give you specific dates, it is too far back.

Q. During the conversation with Mr. Kaufman again, the one in early February with regard to -- A. It wasn't early, it was late February.

Q. I'm sorry, late February or early March, you are right, you said to him something about telling Andy Bostinto to keep him at 3.50 carte blanche; is that correct? A. That is not what I said.

Q. Please tell me what you said. A. All right, I referred to the case and I said at that time, "You are bewildered or wondering why you kept the 3.50."

To answer his bewilderment I had told Andy Bostinto at that time because previously Andy had taken over the job as of January but also previous to that that I kept it at the 3.50 level and to give him carte blanche.

Q. What did you mean by give him carte blanche? A. See if he can bend over backwards to be good to him.

Q. In what way? A. In any way he saw, whether it be first of all by not reducing his pay because he at that time was making the highest pay of any part time person.

1219 Also possibly work out any hour changes because I knew he had to go to school, so whatever he could possibly work out for him.

* * * * *

Q. In your telling Andy Bostinto to keep the 3.50 and give him carte blanche of hours or anything else -- A. Scheduling, you know, because the schedules keep changing, because of this or whatever it may be, the various reasons that we changed the schedules, whether it be economics or timing or whether someone doesn't show, take care of the guy, please.

Q. And that one incident a few months later relating to the Bruce Evans-Paulette Anderson incident just changed your mind entirely and you cut his hours of calisthenics classes from 7 to 4? A. Again his hours were not cut at that time, I have to repeat again classes are not candy. I didn't take the man's candy away. I just said I wanted to make sure that one person doesn't have the control

1220 to give the classes so if somebody else in an emergency, they don't know how to give classes --

Q. You knew he liked giving those classes? A. I will be honest with you, I don't know who likes to give classes or not. Again classes are no fun. You have to stand up there, you have to be a little more extroverted than the average person and -- well, I don't know if he enjoyed it or not.

* * * * *

1223 MR. BLYER: I would like to have this marked, please, as General Counsel Exhibit 10.

(Document marked General Counsel's Exhibit 10 for identification, of this date.)

JUDGE MALLER: We will take a short recess.

(Short recess taken.)

JUDGE MALLER: The hearing will be in order.

Q. Mr. Schwartz, did you ever receive any letters of commendation about Mr. Kaufman's work from anyone? I mean members. A. Yes, I would believe I may have gotten a few letters in the period of time he has been working. I get it on quite a few employees.

Q. I show you GC 10. Do you remember receiving that? A. I don't really but I imagine it is addressed to me, I will acknowledge it.

Q. You think you -- A. Yes, I would say so. I recollect it, some correspondence.

MR. MONAT: May I have a moment to look at it?

1224 Q. This was from the Dean of Pratt Institute and the date is June 15, 1973.

Isn't that about the time you had the conversation with Bruce Evans regarding the Paulette Anderson incident? A. No.

Q. It is not? A. No, it was in June.

Q. When was it? A. July or August.

MR. MONAT: I object. Is this letter going to be offered?

MR. BLYER: I am asking a different question. I am going to offer it.

JUDGE MALLER: Overruled.

Q. You think your conversation with Bruce Evans about the Paulette Anderson incident occurred in July or August?
A. Yes, it did. Not think, I'm sure it took place in July or early August.

Q. This letter was before that then? A. It says June 15th, I would presume so.

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1225 VOIR DIRE EXAMINATION

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Q. (By Mr. Monat) Do you know Nasser Sharify? A. I don't believe so.

Q. Do you know the signature of Nasser Sharify? A. No, I don't.

Q. Do you know that Nasser Sharify is the dean? A. No.

JUDGE MALLER: Dean of what?

MR. MONAT: Of Pratt Institute.

Q. Do you have a specific recollection of ever having seen this particular letter, Mr. Schwartz? A. No, I don't.

Q. You do not? A. That is correct.

MR. MONAT: I object, Your Honor.

1226 JUDGE MALLER: Overruled.

(General Counsel's Exhibit 10 for identification received in evidence, of this date.)

* * * * *

1228 JUDGE MALLER: Very well, we will hold the matter in abeyance. I will vacate my ruling receiving General Counsel's Exhibit 10 in evidence until you call Mr. Kaufman to testify on the receipt thereof.

* * * * *

1232 JAMES PARET

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) Would you please state and spell your name and give your home address to the reporter. A. James Paret, P-a-r-e-t, 251-17 61st Avenue, Little Neck,New York, 11362. Presently engaged in my own business upstate.

Q. On Monday, March 25, 1974 did you meet Paulette Anderson at the Jack LaLanne Spa in Little Neck, New York?

MR. MONAT: I object, Your Honor. I don't think this is proper rebuttal.

JUDGE MALLER: Frankly I can't tell at this point.

1233 I don't know what you are trying to bring out. A. Yes, I did, I met her outside the spa.

Q. How did it come about that you met her? A. The situation arose where her brother Robert Anderson called me on the phone, being a friend of the family, that Paulette would need an impartial witness to the fact that she thought she was going to be fired and she did want the witness.

I told Robert that I was available to act as the witness and this is how it came about.

Q. What time did you arrive at the Little Neck Spa of Jack LaLanne in Douglaston? A. I was there about 5:30.

Q. How did you get there? A. I took my truck.

Q. Did there come a time when Paulette Anderson got there? A. Yes, I met her outside about 6 o'clock.

Q. Did you see how she arrived? A. I assume she arrived in her car. She had just gotten a new one.

Q. What did both of you do? A. We went inside to the spa where Paulette went to sign in and I guess as she usually does and she was told not to sign in.

1234 MR. MONAT: Your Honor, I object. I believe this is part of general counsel's direct case and not proper rebuttal.

We have a hearing and you call five people and we call three people and somebody calls ten more people who were there.

JUDGE MALLER: Counsel, what is this in rebuttal to?

MR. BLYER: Rebuttal to the company's version of what happened at that meeting on the 25th of March, 1974.

JUDGE MALLER: All right, go ahead.

THE WITNESS: You will have to repeat the last question.

MR. BLYER: Read the question, please.

JUDGE MALLER: Read the question.

(Whereupon the last question was read by the reporter.)

Q. You can continue with your answer. What happened after that? A. She was told not to sign in by one of the girls at the desk, whereupon both of us -- she was told John Wilton wanted to see her which is the reason why she didn't sign it.

Whereupon both of us sat down on the couch outside the office.

Q. How long did you sit on that couch? A. I believe we were there for about an hour and a half.

1235 Q. What if anything occurred during that time? A. During that time the various members of the health spa as well as Paulette's fellow employees were very curious as to why she was sitting on the couch and not working.

She told these people that she thought in effect that she was going to get fired and she was told not to sign in.

I noticed that a lot of the members came up to her and expressed their sympathies with the situation and they told her she had done a wonderful job, and --

MR. MONAT: Objection.

JUDGE MALLER: All of this is irrelevant.

Q. Did there come a time when you went into Mr. Wilton's office? A. Yes. The same evening John Wilton came out and asked Paulette to come into the office.

Q. Approximately what time was this? A. 6:30, 7. I don't carry a watch.

Q. What happened when you got inside? A. We both went in. John Wilton didn't know if I was more or less allowed to be there in the capacity of a witness or something.

Paulette assured him that it was perfectly legal and whatever else went along with the witness being there.

1236 John Wilton said he wanted to get his witness in, called upon Joan Holland to come in.

Q. What happened? A. We sat down and various discussions ensued, starting off with the fact that Paulette should be paid for the hour and a half sitting on the couch.

John Wilton assured her that he would see to it that she would get paid.

The discussion went to the fact that he said she would have to go to Madison Avenue to work and Paulette said that she couldn't go to Madison Avenue to work.

We also discussed receiving a notice three times I think it is if you are being fired which Paulette did not receive.

All these, you know, general discussions I guess ensuing what happens when a person is fired were discussed at the time and it ended up that John Wilton said to the effect that he really didn't want to fire Paulette but he had to and he said as manager, "I, John Wilton fire you," from her job.

Paulette produced a slip of paper which stated that in essence she had been fired. It was written down on a piece of paper and asked everyone to sign.

Some wording was changed. I can't remember exactly what
1237 was changed. Changed the wording and we all signed our names. Three of us present signed our names, I think, and the meeting was more or less ended.

Q. Did you notice on this occasion whether Ms. Anderson had with her anything? A. Yes she had her uniform which I distinctly remember after sitting with her for an hour and a half. It was awkward shifting the uniform on her lap and in fact we had to sit there on the couch.

MR. BLYER: I have nothing further, Your Honor.

JUDGE MALLER: You may cross examine.

CROSS EXAMINATION

Q. (By Mr. Monat) Mr. Paret is it? A. Yes, yes.

Q. You say you are from upstate? A. I never said I was from upstate.

Q. I'm sorry, I must have misunderstood. Did you say something about upstate? A. I gave my address to the man taping.

Q. Of your business upstate? A. It will be upstate.

Q. Who is Robert Anderson? A. He was the brother of Paulette Anderson.

Q. How do you know him? A. I have known Bob Anderson for several years. I have known him through the gym,

1238 through mutual friends and I see him.

Q. Any business relationship? A. None at all.

Q. You were a member of the gym? A. For three years, yes.

Q. Are you still a member? A. No, my card lapsed.

Q. Who first called you about the matter? A. Bob Anderson called me about the matter.

* * * * *

1240 Q. You say you arrived at the gym at 6 o'clock? A. No, I said 5:30.

1241 Q. You arrived there 5:30? A. Approximately 5:30.

Q. And Paulette Anderson arrived there promptly at 6? A. Promptly at 6.

Q. How do you know that? A. They have clocks all over the place.

Q. Where was the local clock that you looked at? A. There was a clock in the library.

Q. Which one where? A. There is a library a couple of doors down that has clocks.

Q. Public Library? A. Yes, sir.

Q. You were sitting in your jeep looking? A. No, sir.

Q. You were sitting in the library? A. No, sir.

Q. How did you happen to see the clock? A. Because I don't like to stand in one place. I was walking up and down the block.

Q. And you made a note when you first saw her that it was 6 o'clock? A. Approximately.

Q. You specifically made an effort at that point to check the clock? A. No, I didn't go out of my way to check the clock.

1242 In the normal course of events you glance at the clock.

Q. Please try to be precise. How do you know exactly that it was 6 o'clock? A. I never said I knew exactly.

Q. Could it have been later than 6? A. Could have been later than 6, could have been earlier than 6. I said approximately 6.

Q. It could even have been 6:20? A. I doubt that.

Q. But it is possible? A. Because I looked at the clock before and it wasn't after 6. Maybe I should carry a watch, I don't know.

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1244 Q. Were you aware that Paulette had a letter with her? A. I believe I was aware that she did have a letter with her.

Q. Who told you? A. Who told me? I think Bob may have told me. That was the whole purpose of my being there, was as a witness and witnesses usually sign things.

Q. You mean he said you would have to sign a letter? A. He didn't say I had to sign anything.

Q. Bob tell you there would be a letter there? A. He said there would be something, okay, he said there would be a letter.

Q. That you would be expected to sign it? A. He didn't say I would be expected to sign it.

Q. You would be expected to be a witness to it? A. A witness to the proceedings.

Q. Is that what he said, the proceedings? A. Yes.

Q. That is the word he used? A. Yes. I don't know the
1245 exact word he used, you can't pin me down to words.

Q. Paulette have a pocketbook with her? A. I think she had a big type pocketbook. I don't -- something to the effect -- I think bigger than that white one if I can point to it.

Q. Who actually told you it was time to go to Mr. Wilton's office? A. I think John Wilton came out and said, "Okay," or whatever he said, "Let's come in, come into the office."

Q. Don't you recall that he apologized for having you wait so long? A. He may have. I can't say he did or didn't.

Q. This is about the time you were waiting? A. I may have been too mad to notice.

Q. You were angry about the situation? A. I wasn't angry, I wasn't happy about being kept waiting.

Q. You just said you were mad. A. Semantics.

Q. What did John say? What is the first thing you remember John saying once you were in the office? A. Words to the effect that he didn't know if I should be there in the capacity of a witness.

Q. Did you say anything to that? A. I think Paulette men-
1246 tioned that it was okay for me to be there as a witness.

Q. What is the next thing that John Wilton said? A. He said he was going to get Joan as a witness.

Q. That is all that was said before Joan Holland came into the office? A. I can't say that was all that was said.

Q. Isn't it a fact that Paulette Anderson had already taken out the letter at that point? A. No, sir.

MR. MONAT: Did General Counsel take an affidavit from this witness?

MR. BLYER: No.

Q. Is it your testimony that it was only after Joan Holland came into the office that the letter was shown? A. After he pronounced her fired the letter was taken out.

Q. I'm asking you whether the letter was taken out before or after Joan Holland came into the office. A. Joan Holland was in the office at the time.

Q. At the time the letter was first shown? A. The letter was first shown.

Q. I want you to tell me once more exactly what was said prior to Joan Holland coming into the office. A. We went to the office and John Wilton didn't know whether I could be permitted to come in as a witness to the proceedings and Paulette mentioned that
1247 it was okay and John said he was going to get his witness, it should be Joan Holland.

Q. That was it? A. Yes.

Q. Did Paulette take a letter out of her pocketbook? A. Yes.

Q. Did she have to open her pocketbook to take it out? A. I can't recall.

Q. You don't remember that? A. No.

Q. Did she carry the uniform with her into the office? A. I think she may have left it outside. I can't be certain if she carried the uniform in. I don't think she did.

Q. Were you carrying it? A. The uniform? No.

Q. Do you remember her leaving it outside? A. I just recalled --

Q. Yes or no or you don't recall? A. I don't recall.

Q. Do you know if she brought it in the office? A. I said I don't think she brought it into the office.

Q. In any event, when she took out the letter all she had in her hand was the pocketbook, if you recall? A. Yes.

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1248 Q. Did you know Ms. Anderson prior to this March 25th date? A. Yes, I did.

Q. How did you know her? A. Through Bob, Bob Anderson.

Q. How friendly are you with Bob Anderson? A. Relatively friendly, pretty friendly.

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1251 Q. At the time of the meeting did you know that she could have gone to Madison to work? A. I know from the fact that it was said.

Q. It was? A. Yes.

* * * * *

1252 Q. Hadn't Paulette Anderson told you before this meeting that she could have gone to Madison to work? A. I don't think it was Paulette who told me.

Q. Her brother Bob told you? A. That is a distinct possibility.

Q. You don't recall that for sure either? A. It is hard to say.

Q. Somebody had told you? A. I knew, I was told. I knew.

* * * * *

1253 Q. Didn't you know, Mr. Paret, that the company, Jack LaLanne, had bent over backwards to get Ms. Anderson to

go to Madison so no further action would be necessary? A. No, I did not know.

Q. Didn't you know that there had been phone calls on Friday and Sunday? A. No, sir, I have no knowledge of this. I did not concern myself with it.

Q. Bob Anderson didn't bother to tell you about all that? A. No.

Q. What did Bob Anderson tell you? A. He asked me if I would appear as a witness, that they were having problems.

1254 Q. Period? A. Yes.

Q. That was all? A. I may have discussed other, you know, things, as friends but that is the extent of the discussion on this matter.

Q. When you saw Paulette you asked her about problems, you didn't discuss what was going on with her, you just kind of met her and sat in the lobby for an hour or whatever, right? A. More or less.

Q. Then you came into the meeting and you weren't surprised about what was going on? A. No, I wasn't surprised.

Q. You came there knowing you were going to witness somebody being fired, didn't you? A. I didn't know for sure if she was going to be fired. It was felt that she was going to be fired.

Q. You thought maybe she wouldn't be fired? A. I didn't feel anything; there was a possibility she wouldn't have been fired. There was a possibility she would have been fired.

Q. So you were going to be a witness to possibilities; is that right? A. Right.

1255 Q. Let me ask you this, after you walked out did you discuss the matter with Paulette? A. No, I didn't.

Q. You just drove off? A. She drove her way and I drove my way, yes.

Q. It strikes me you are not a very curious fellow, Mr. Paret. A Not really.

Q. I mean if I was in your position I would have been asking questions on what is going on. You weren't inclined to do that? A. You know, I have a normal curiosity, you know, but I wasn't going to stand there asking specific details. It wasn't my business.

Q. You were going to be a witness there, weren't you? A. That is what I was asked, a witness.

Q. Didn't you know that Paulette had testified in an NLRB proceeding -- A. No, sir.

Q. In a union -- A. Nothing.

Q. Nothing about that? A. No.

Q. Bob Anderson never told you about that? A. No.

1256 Q. Did you ask anyone, "Well, why a witness? Why do you need a witness?" Did you ask anyone? People get fired all the time. A. It seems very odd but a friend of mine asks me to do something I do it because he is my friend. I don't need a detailed explanation as to why or how.

Q. But you realized, didn't you, if you were going to be a witness it would be important that you remembered exactly what happened? Didn't you realize that? A. As a witness -- as a witness, you know, I might need to remember what happened. Exact details maybe, maybe not, but generally a witness, you are there to witness.

Q. To remember? A. Not necessarily to remember.

Q. You don't think it was important that you remember what happened then? A. It was more important that they wanted my signature that I saw what happened.

Q. Did you ever make any notes or write anything down about that day? A. No.

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1258 ROLINDA ANTONE

having been previously sworn, resumed the stand and testified further as follows:

JUDGE MALLER You previously testified in this case and you were sworn and you are still under oath.

FURTHER REDIRECT EXAMINATION

Q. (By Mr. Blyer) Mrs. Antone --

JUDGE MALLER: Please have her identify herself.

1259 Q. Please tell the reporter who you are. A. Rolinda Antone. Do you want my address?

Q. We have it already.

JUDGE MALLER: Are you the same Mrs. Antone who previously testified in this case?

THE WITNESS: Yes.

Q. When you first began working for Jack LaLanne how many hours were you working for them? A. Eight hours a week.

Q. Did there come a time that you remember in December I believe of '73 that you requested additional hours? A. Yes.

MR. MONAT: I object. I think the witness covered this on her direct testimony.

MR. BLYER: It is just introductory, Your Honor.

JUDGE MALLER: Keep it brief, the introductory matter.

Q. What day was added to your schedule? A. Friday nights.

Q. Did there come a time when your hours again changed? A. Yes, sometime in January I requested to stop working on Friday nights.

Q. Who did you make that request to? A. Joan Holland.

Q. Did you speak to anyone else about that request to reduce
1260 your hours? A. No.

Q. Did you speak to Anita Katz about that? A. No.

Q. Were your hours in fact reduced? A. Yes.

Q. What hours on what days were taken away? A. I stopped working Friday nights.

Q. The records will show that the last day you worked Friday nights, and these records are in evidence for January 11, 1974.

When did you tell Ms. Holland that you no longer wished to work Friday nights? A. Sometime during the next week before the following Friday night.

Q. How do you know that you told Ms. Holland that you no longer wished to work Friday nights after January 11, 1974? A. Because my husband works as a musician on the weekends and I asked him to go back through his records to find out when his booking was booked for the following weekend.

It was booked like two or three days in advance so I didn't know the week before.

Q. What role does your husband have in playing whether you
1261 can work or not? A. Well, if he works then I can't because he watches -- I have a daughter and he watches her on Friday nights.

Q. Is there any other reason why you know that you informed Ms. Holland that you no longer could work Friday nights after your last Friday night on January 11, 1974? A. Well, I'm sure I told her after because I would have waited as long as I could tell her

because I knew they would give me a hard time when I told them because I requested the Friday nights and I knew that they wouldn't be, you know, happy about it when I asked to have it taken away.

Q. Mrs. Antone, do you recall a meeting with Anita Katz, Joan Holland, Dee, yourself, Jackie Balabaos and Jeanne Murphy during the course of your employment at Jack LaLanne?

MR. MONAT: I object, Your Honor. This is clearly evidence that this witness could have testified to on direct.

JUDGE MALLER: I don't know where counsel is going. I will let her answer.

Q. Do you remember such a meeting? A. Yes.

1262 Q. Where did this take place? A. In the gym.

Q. Can you tell us what was said during that meeting?

A. Anita Katz came into the gym and --

MR. MONAT: Your Honor, I object. I think she is going into just matters on direct. I don't think counsel is going anywhere except to try to get more witnesses for meetings already fully covered.

JUDGE MALLER: Is this something the witness testified to on direct?

MR. BLYER: No, Your Honor.

MR. MONAT: Other witnesses did though, his other witnesses did.

MR. BLYER: That is correct. I had other witnesses testify but this is in response to the company's version of what occurred.

JUDGE MALLER: All right, let her answer.

Q. What happened during this meeting, please? A. Anita Katz came into the gym and announced that Joan Holland would be the new floor manager and Dee Arnott would be the assistant floor manager.

Q. During the course of that meeting was there any discussion about them being managers in training? A. No.

Q. Did you ever attend any meeting where Mrs. Katz announced that either of the girls, Joan or Dee, Joan Holland or
1263 Dee Arnott would be managers in training? A. No.

Q. Do you recall testifying here on Thursday, July 18th? A. Yes.

Q. After that what was the next day that you were back at work? A. Monday, July 29th.

Q. On that occasion did you have a conversation with Dee Arnott? A. Yes.

Q. Will you tell us from the time you got there what happened? A. Dee asked me what happened in court. She wanted to know about it and I told her.

JUDGE MALLER: Was anybody else present?

THE WITNESS: Yes.

JUDGE MALLER: Who?

THE WITNESS: A new girl working there, Melanie but I don't know her -- I'm sorry, that is wrong. The first time I spoke with her about what happened in court when Wendy Lord was.

JUDGE MALLER: Who?

THE WITNESS: Wendy Lord.

JUDGE MALLER: Was present?

1264 THE WITNESS: Yes, and I was telling them what happened in court and when I related the incident about Paulette getting extra cleaning duties Dee said she remembered that night because her and Joan Holland were called into Anita Katz' office and were told to give Paulette and Debbie extra cleaning chores because they wanted to get rid of them.

Dee said she felt bad because Paulette is a good kid and she didn't want to get involved.

Q. Anything else said in that conversation with Dee Arnott on this occasion? A. Yes, she said she didn't want -- they wanted her to go to court but she didn't want to do because she didn't want to have to lie for them.

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1265 Q. Mrs. Antone, we are talking about August 5th. Let me ask you again, did you have a conversation that evening with Dee Arnott? A. Yes, I did.

Q. Was anyone else present during that conversation? A. Yes.

Q. Who was that? A. Melanie, new girl who works there.

1266 Q. Where did this take place? A. In the gym.

Q. Would you please tell us about that conversation? A. First I was speaking with Melanie, telling her how they used to have part timers there with me and now I was the only part timer. I was complaining to her and then Dee walked in and Jackie.

I said, "Dee, I'm quitting," and she laughed and she said, "What is wrong?"

So I told her, I said, "Either get more part timers or I don't want to work just six hours a week, it is ridiculous."

So she said couldn't I work more hours. So I told her it was impossible to work from 5 to 9, that I would have to work from 6 to 10.

She said she would see what she could do about it.

I told her I didn't think I would get the hours because that I came to court and she said it didn't matter because she was the boss, she had the authority over me, not Anita Katz.

Then I asked her if I could get a raise and she said she had put in for a raise for all the girls but that Wendy Lord was the only one to get it so far.

Then I left there on the assumption that she was going to try to get me more hours and hopefully try to get me a raise.

1267 I wasn't counting on that and Melanie was present during that conversation.

MR. BLYER: I have nothing further, Your Honor.

JUDGE MALLER: Cross-examination.

CROSS EXAMINATION

Q. (By Mr. Monat) Your hours had been cut back in February, do you remember that? Not talking about Friday nights now when your hours were cut. A. Yes.

Q. Also like an hour -- A. Right, an hour a night.

Q. So what were your hours as of August 5th?

A. Monday and Wednesday, 6 to 9.

Q. How long had you been working those hours at that point?

A. I don't remember exactly. Since they were cut since the --

Q. Since about February? A. Right. I don't know the exact date but since then I was just working those two nights.

Q. You told Dee you were quitting, didn't you? A. Jokingly.

Q. Did you say that to her?

MR. BLYER: Your Honor, I don't think there is any need to raise his voice and yell at the witness.

1268 JUDGE MALLER: If counsel wants to yell -- did you tell her you were quitting?

THE WITNESS: Yes, I told her I was quitting.

Q. Did you say to her, "I am quitting jokingly?"

A. Yes.

Q. You used the word jokingly? A. No, I was laughing. I figured she knew I was trying to talk to her about either improving my hours, improving the working conditions or giving me a raise.

Q. What was it at that point that suddenly led you to complain about your hours? A. What was it?

Q. Yes. A. It wasn't just at that point. I always complained about them. Ever since Paulette and Debbie were fired and they never replaced the part timers.

I always complained that and a new girl even said to me that night. She said it is true, she said, when you come in at night we just sit back and say oh good, she is here because the part timers takes over the full timer's work.

Q. Is it your opinion that Debbie was fired? A. No.

* * * * *

1269 JUDGE MALLER: It is not important to the case what this witness thinks, whether she was fired or not fired.

MR. MONAT: Your Honor, I suggest it is. I suggest it is a relevant credibility factor.

JUDGE MALLER I don't see it, Counsel.

* * * * *

1270 Q. What was the last day you worked at the company? A. August 5th.

Q. Did you come in on August 7th? A. Yes.

Q. At that point you said you had not quit and Dee Arnott said you quit and there was confusion and you sat down with Anita Katz and talked it out? A. She really didn't talk to me.

Q. But for a minute didn't she try to straighten it out and have you sit outside? A. She really wasn't interested in straightening it out. That was the impression I got.

Q. Didn't she ask you to sit outside and wait? A. She asked me to sit in an office.

* * * * *

1271 Q. Do you remember there was some confusion at that point when you came in on Wednesday, wasn't Jona Kelman there? You don't know? Do you know Joan Kelman? A. No, I don't.

Q. Didn't Anita Katz ask you to step outside of her office
1272 and wait a few minutes? A. When she saw me she asked me to come upstairs and sign some papers and get my check. It was 5 to 6, I was late --

Q. They thought you quit?

JUDGE MALLER: Let the witness finish.

A. (Continuing) It was 5 to 6 and I was supposed to be on the gym floor 6 o'clock and when she told me that I said I have to be on the gym floor in five minutes.

She said, "I was under the impression that you quit," and I said I didn't quit and she told me she spoke to Dee and I said I want to speak to Dee because I want to straighten it out. I did not quit.

Q. Then didn't you and Dee go upstairs? A. Yes.

Q. And sat down with Anita? A. Yes.

Q. There was some talk, she let you and Dee talk as to what happened? A. Right, and Dee had one version and I had another version.

Q. The. weren't you asked to step out? A. They both left and left me in the office. I don't know.

Q. You were left in the office? A. Yes.

1273 Q. Didn't they go to make some phone calls and check the matter out? A. I got the impression that I was just being left

to sit there hoping that I would leave which is exactly what I did because --

Q. Did anybody tell you to leave? A. Well, they didn't tell me I could work, and --

Q. Weren't they checking into the matter? A. But there was no one to check into.

Q. Didn't Anita Katz say she wanted to talk to somebody about it? You were left sitting in her office and she walked out? A. The only person she would have to speak to about it was Dee because she was the one who I had this with.

Q. That is in your opinion. Did she step out with Dee? A. I did not see them go in the same direction. I don't know where they went.

Q. Wait a minute, you were in the office with them. A. Yes.

Q. Now they left? A. Dee was on supper.

Q. They were talking to you, right? A. Yes.

Q. What did they say to you when they walked out? A. They
1274 didn't walk out together. Dee was on her supper and Anita went out to make a phone call. She said watch her things while she went and changed into her uniform and she came back and said, "I have a phone call." She talked to her daughter on the phone.

Q. Didn't she say she wanted to talk to somebody about your particular matter? A. No, she made me feel like I was going to sit there until she was ready to tell me what was going on.

Q. But she was going to tell you what was going on, you understood that? A. I don't know. They didn't come back and tell me.

Q. Didn't you walk out? A. At 7 o'clock. I stayed there from 6 to 7, not getting paid for it.

Q. You are telling us that you sat with nobody talking to you from 6 to 7 o'clock? A. In and out. Nobody talked to me about my job, about me going onto the gym floor and working.

Q. So you walked out, right? A. Yes, I left and I said as far as I was concerned I did not quit. I told the manager of the club that and he was staying there and I said call me up and I will come and get my check. I said I just couldn't take it anymore. I didn't like the way I was being treated.

1275 Q. Did you come back to work? A. No, I did not.

Q. You haven't been back to work since? A. No.

Q. Did anyone tell you you were fired? A. No, they told me --

Q. Did anyone tell you you were fired? A. No one told me I was fired.

Q. On July 29th I want you to tell me exactly what Dee Arnott said to you in the presence of Wendy Lord. A. I will tell you, I can't tell you the exact words.

Q. I want you to be very precise because you are here testifying that a girl in fact lied on the witness stand.

JUDGE MALLER: Please tell us as near as you can remember. A. She came -- when she came in I told her I went to court and she wanted to know what happened at court. She said, "Tell me the whole thing." Her and Wendy were very interested.

So when I told her what happened, when I related the incident about Paulette getting extra cleaning she said she remembered that night.

Q. You relayed an incident? A. That I testified, I told them what I testified about Paulette getting extra cleaning.

1276 Q. What was the first thing that was said in this conversation and by whom? A. By who?

Q. In this conversation who spoke first? A. I was telling them. They asked me what happened.

Q. Who asked you? A. Dee and Wendy. They knew --

Q. Dee and Wendy asked you what happened at the hearing? A. Yes.

Q. What did you say? A. I told them what happened.

Q. I want to know what you said.

JUDGE MALLER: What did you tell them?

A. I told them I testified that the night Paulette had extra cleaning duties that I offered to take them over for her but I wasn't permitted to.

Q. But there was one night you refer to, one night?

A. Well, that was at night, yes, the night of my testimony.

Q. When you talked to them you related to them that you had testified about one night where Paulette had been given extra cleaning duties? A. Yes.

Q. That is all you mentioned, the point about the cleaning duties? A. I don't remember exactly. I told them that and she

1277 told me she remembered that night and she told me why, that she was called into the office with Joan Holland and told by Anita Katz and Anita Katz told them both to give Debbie and Paulette extra work because she wanted to get rid of them.

She said she felt bad because she liked Paulette and didn't want to have to do that to her. She also told me she didn't want to come to court.

MR. MONAT: Could I have that last answer read back?

(Whereupon, the last answer was read by the reporter.)

Q. What else did she say after she said she didn't want to come to court? A. She said she didn't want to come to court because she didn't want to lie.

Q. What else did she say? A. I don't think she said anything else. I just told her a little more about the hearing. I don't remember exactly what. She was curious, she wanted to know.

* * * * *

Q. Did Wendy Lord hear this whole conversation? A. I don't know if she was standing there the whole time.

* * * * *

1279 Q. It is a question of who else might be a witness to this matter. There is you and there is Dee Arnott. You say there is Wendy Lord and I am asking is there anyone else who heard what was said. I'm not asking for your opinions as to whether they were interested or not. A. I don't know. I honestly don't know.

Q. You don't know? A. No.

* * * * *

Q. After this conversation did you tell anyone about it? A. No.

Q. You didn't? A. You mean in the gym?

Q. Anyone at all about this conversation with Dee Arnott? A. Yes, I did.

Q. Who did you tell? A. I told Richie Kaufman.

Q. You told him when, how soon after that? A. I really don't remember.

Q. That night? A. No.

1280 Q. So you didn't tell him on July 29th? A. No. I probably told him the next time I saw him. I didn't see him that often.

Q. How much after July 29th did you tell Richard Kaufman? A. I really don't remember. The next time I saw him or the next time I spoke to him over the phone. It couldn't have been that much longer.

Q. Was it on the telephone or in person? A. I don't remember.

Q. You don't even remember if it was in person or the telephone? A. It was probably over the telephone. I really don't remember exactly.

Q. Well, did you call him at home? A. No.

Q. Did he call you at home? A. Yes.

Q. He did? A. Yes.

Q. So you recall that he called you at home? A. Yes.

Q. How much after July 29th did he call you at home.

A. I don't remember. Probably a few days.

Q. Is it unusual for Richard Kuafman to call you at home?

1281 A. Not while this was going on, but --

Q. Not during this hearing? He was kind of organizing the whole thing, getting it all together, getting the witnesses? A. No, he called me to see how I felt because I had a concussion.

Q. What did he say to you when he called? A. "How do you feel?" And he asked me what happened at work because I didn't go to work the following Wednesday. I really don't remember exactly the exact words.

Q. What else did he ask? A. He asked me what happened at work. When I told him what happened with Dee, he just --

Q. Did he ask you if you have been speaking to Dee Arnott? A. I told him. He didn't know I was talking to her.

Q. He didn't ask you who you had been speaking to in the gym? A. No, because I told him. He wouldn't know who I was talking to.

Q. He just called you to find out how you were feeling? A. Yes.

Q. That is all? Prior to this call how many times did Richard Kaufman call you? A. Once or twice to see about when

1282 I was coming to the hearing the first time because I needed a ride. I wasn't able to drive.

Q. How about the second time? A. The second time --

Q. What was the second call? A. It was probably during the few days before the first time I testified because there was a period of a couple of days when I didn't know what day I could come because I wasn't feeling well and he called me a few times to see when I was coming, if he could pick me up or if Paulette was going to pick me up.

Q. But the next conversation was simply to call you to find out how you were feeling? A. And to find out what happened at work.

Q. To find out what happened at work? A. Yes.

Q. Did you say, "What do you mean what happened at work?" Did you say that to him? A. No, because I think I knew what he meant.

Q. You knew what he meant? A. I think he might have. I mentioned it when I went back to work, after I testified. I thought I might have a hard time.

1283 Q. So you expected Arnott might make some comment to you long these lines? A. No, I didn't expect to have any trouble from Dee. I expected to have trouble when I saw Anita.

If I didn't see Anita I think I would have still been working there.

Q. You assumed when you had testified here then you would be in hot water with the company, isn't that right? A. Yes.

Q. You were worried? A. Well, I wasn't worried. I wasn't losing sleep over it. I just assumed that they weren't going to be too thrilled that I testified, but I told the truth and I really didn't -- as far as I was concerned when I went back to work there was no trouble with Dee or any of the other girls. They treated me fine.

Q. Would it be fair to say that if you had had your choice you really would have preferred not to testify here as well?
A. No, it is not fair to say that, no. I wanted to testify the first time.

Q. You wanted to? A. Yes.

Q. Did you ever say to anyone that you would prefer not
1284 to testify? A. No. I don't like the idea of coming to court and, you know makes me nervous but I wanted to help Paulette.

* * * * *

Q. What do you regard as your present status with the
1285 company? A. I'm not working there.

MR. MONAT: Mark this, please.

(Document marked Respondent's Exhibit No. 23 for identification, of this date.)

Q. Mrs. Antone, have you ever seen that letter?
A. No.

Q. Have you had any notice from the postal service that you have a certified letter, return receipt, at the post office? A. No. There was a letter sent to my house about -- I don't know when, but about a week ago and I wasn't home and I had a babysitter there and she was asked to sign for it and she wouldn't sign for it.

Q. Didn't you get a notice from the post office? A. No, I haven't received anything.

Q. Did you inquire? A. No, because I assume that they would try to send it if I had to sign for it. She wasn't going to sign for it, the girl.

I figured they would send it back to me. I thought it might have been my check but I wasn't sure.

Q. Dee Arnott did say to you that she didn't want to testify; isn't that right? A. Yes.

1286 Q. Did you ask her why not? A. I knew why.

Q. What? A. I knew why she didn't want to.

* * * * *

1287 RICHARD KAUFMAN

was called as a witness and having been previously sworn resumed the stand and testified further as follows:

CONTINUED DIRECT EXAMINATION

Q. (By Mr. Blyer) Mr. Kaufman, in September --

JUDGE MALLER: Identify him, for the record.

Q. Please state your name? A. Richard Kaufman, K-a-u-f-m-a-n.

Q. Were you going to school in September of '73?

A. Yes, I was a full time day student at Queens College.

Q. And Mr. Matinelli? A. He was a full time day student at Queens Borough Community College.

Q. Miss Isgro and Mr. Cash, do you know their status, schoolwise in September of '73? A. Yes, Bob Cash and Joe Isgro were both full time students at the New York School of Technology.

Q. When did they go to school?

MR. MONAT: I object, Your Honor. I object to the competence of this witness to testify to their schooling.

JUDGE MALLER: If he knows he may testify.

THE WITNESS: Repeat the question.

1288 Q. When did they go to school? In September of '73 were they day students, night students or what? A. They were all full time day students.

Q. How long did you work with Isgro and Mr. Cash at the Jack LaLanne Health Spa in Douglaston? A. Bob Cash I worked with every since I started there in August of 1971, and Joe Isgro I believe was there with me approximately about a year.

Q. Are you still friendly with Mr. Cash and Mr. Isgro? A. Yes.

Q. Are they still in school? A. Yes.

Q. Will you tell us about this November 13th incident involving the cleaning of the track? A. Yes, it was --

MR. MONAT: Your Honor, which date is that?

MR. BLYER: It relates to the warning notice issued November 13th. I will double check what I think that is the date.

MR. MONAT: All right, go ahead.

Q. Why don't you tell us about that incident on the 13th of November, 1973? A. Well, November 13th was Tuesday evening and after normally working we have our clean ups which

usually start about 9 or so, a little after, depending if anybody walks in to be taken around, and I was on to 9:30 so I had to 9:30
1289 to clean.

JUDGE MALLER: You were what?

THE WITNESS: I was on that night working and I worked until 9:30.

A. (Continuing) I vacuumed, just finished vacuuming the main gym. It was about 25 after 9 and I was on until 9:30, so I was bringing the vacuum cleaner diagonally across to try to bring it into the track area. It is a big thing, we have to carry it and it has a hose, so I was bringing it across the gym and the floor manager Frank Bieler at the time told me, "Listen, Richie," he said, "It is 25 after 9. You are here until 9:30. Forget about it. We will have someone do it tomorrow night."

Q. Thereafter did Mr. Wolf attempt to get you to sign a warning notice relating to that cleaning up on the track? A. Yes, two weeks later, November 27th, also on a Tuesday night I came into work at the usual time, about 10 to 5. I was on at 5 o'clock and Steven Wolf said to me, he said, "I want you to read this and sign it."

So I read it and I said, "What do you mean?" I didn't, you know, not clean the track. I vacuumed the track I had to do and Frank told me to forget about the rest, someone will do it the next time.

1290 So he told me Barry Flickstin had given that to him to give to me, the warning sheet.

At that time I was not aware of any warning sheet had ever been given out before.

So anyway, that night, after I finished work we had a small meeting with the manager, Richie Orenstin called all the instructors, and he was telling us that if we had any problems that we should go to him.

JUDGE MALLER: This is on the 27th?

THE WITNESS: Yes, this is two weeks later.

A. (Continuing) So I told him I had a problem. I said I was given a warning sheet unjustly so he said that, "Well, we will discuss it in my office later."

So about five minutes later the meeting ended and I told Frank Bieler who was the floor manager at the time to come with me.

So we sat down with Richie Orenstin and I told him what had occurred the night why I didn't vacuum the track.

I told him that Frank had told me that it was five minutes to go that I was working there and he said to forget about it.

He said, "We will have someone do it the next night."

Frank Bieler who is the floor manager agreed with me and then Richie Orenstin left it at that.

MR. BLYER: Mark this as G.C. 10.

1291

(Documents marked respectively General Counsel's Exhibits 10(a) and 10(b) for identification, of this date.)

Q. Can you identify what has been marked for identification as General Counsel's Exhibits 10a and 10b? A. Yes, this is a letter from a member of the club who I have taken around at numerous occasions and I received this as Jack LaLanne's on Thursday, June 21st from the receptionist, Dottie Schwinger, and it is a letter, a copy of a letter that he sent to Mr. Schwartz telling him about my work habits.

Q. The handwritten subject matter on General Counsel Exhibit 10a, is that your handwriting? A. No, it isn't.

Q. When you received the letter was the envelope sealed? A. Yes.

Q. With regard to 10b, there is penciled in on the envelope "Letter of praise for work at Jack LaLanne."

Was that there when Dottie Schwinger gave it to you?

A. No, my father had written that after I brought it home and showed it to my family.

MR. BLYER: I offer this, Your Honor, as General Counsel Exhibits 10a and 10b.

MR. MONAT: May I have some voir dire, Your Honor?

1292 JUDGE MALLER: Voir dire.

VOIR DIRE EXAMINATION

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Q. (By Mr. Monat) Didn't you find it rather convenient at that time to get a letter praising you just when the union matter was starting? A. Well, the letter was addressed to me. I don't think

1293 anybody knew what was in it, including myself.

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1294 Q. Do you think any customers knew of your role with the union? A. I believe some customers had.

Q. What about Nasser Sharify? A. I don't believe he had.

Q. You don't think so? A. No.

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1296 JUDGE MALLER: Yes. Now relating to the admission or non admission of General Counsel Exhibit 10a and 10b.

MR. MONAT: I would object.

JUDGE MALLER: You object?

MR. MONAT: Yes.

JUDGE MALLER: General Counsel's Exhibits 10a and 10b are received in evidence.

(General Counsel's Exhibits 10a and 10b received in evidence, of this date.)

CONTINUED DIRECT EXAMINATION

1297 Q. (By Mr. Blyer) Do you know a Mr. Schwartz' Uncle Sam? A. I don't believe so.

MR. BLYER: I have nothing further.

JUDGE MALLER: You may cross-examine.

CROSS EXAMINATION

Q. (By Mr. Monat) You remember your calisthenic classes? I think you testified they were cut from seven to four?

A. Correct.

Q. When they were cut did you show that letter to anybody at the company? A. No.

Q. Show it to Andy Bostinto? A. No.

Q. Did you say, "Andy, what are you doing? I'm a great guy. Look at this letter." A. I am afraid it would come back to me.

Q. You figured -- A. Someone would say they received it.

Q. Who would say they received it? A. Maybe Mr. Schwartz would tell me.

Q. You were hoping then that they would say, "We just remembered, Mr. Kaufman, we got this letter, we are bringing

1298 you back up to seven classes?" A. No, they would say they received it and, "We know you are doing a good job."

Q. So you were hoping that they would say that, that you weren't going to point it out? A. Right, correct.

Q. Did you bring this letter to anyone's attention, Andy Bostinto or Harry Schwartz or Tom Sansone? A. No, at that time I had nothing to do with my classes, more or less just work to do on the gym floor.

Q. When did you first bring this letter to the attention of any management official? A. I don't think I have ever brought it to their attention. I just remembered having it just recently.

Q. Just remembered it? A. Yes.

Q. When did you remember? A. Just before this part of the trial, the second part, continuation. This was Monday.

Q. You first remembered this sometime between the recess of the first four days and the beginning of these four days?
A. Well, just specifically Monday I remembered it. I was just curious to see what date it had been written.

1299 Q. Do you keep a file of all these things? You have a big file? A. Well, my father had kept that letter and I was looking for something about a week ago and I remember seeing it. That is why it has, "Praise letter for Richard Kaufman," because my father had kept it to show it to the family.

Q. So you were looking for something to show you were a good worker? A. I was just curious to see what date that had been. I lost complete recollection because of all I was going through and that it had slipped my mind. I was curious as to what that letter was again.

Q. There was quite a big going on, you would agree with that? A. Correct.

Q. What do you remember that was going on? A. Well, I remember that after we signed the cards and they were presented, that that night, June 13th was a Wednesday evening.

The next night we had a big meeting with Andy Bostinto, the supervisor, and --

Q. That is the meeting where Judge Stevenson passed on that meeting in the prior case? A. What do you mean by passed on?

1300 Q. Wasn't that the subject of the prior hearing? A. Yes, correct.

Q. Is that what you mean by everything going on? A. Well, then we weren't allowed to work out in the gyms and things were getting much more stricter around there.

Q. Things were rough at that time? A. Correct.

Q. It was really hostility then? A. I wouldn't say hostility, just a matter that everything was becoming like you have to toe the mark. In other words, you have to do things, stay at the time you had to stay.

In other words, sometimes full timers would be able to leave, instead of staying until 10 they could leave like 10 to 10, a quarter to 10. They had to stay until 10 o'clock, and other things.

You weren't allowed to come to the gym on your days off, you had to receive your checks by the manager and you couldn't stay around, you had to leave the premises. These kind of things.

Q. And these things continued for the last year, I presume? A. Throughout the year?

Q. Yes. A. Yes, they cooled off after the election.

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1301 Q. They cooled off about December 12th and 13th you would say? A. Right around that area.

Q. Things were calm at the gym after that? A. Yes.

Q. There were any problems at the gym after that?

A. Correct.

Q. Who was Dottie Schwinger, who is she? A. She is the receptionist. Was the receptionist at Jack LaLanne's Little Neck location.

Q. Where did she sit? A. In the front desk.

Q. In the lobby? A. Yes.

Q. Frank Bieler was your friend, fellow union cohort?

A. Yes.

* * * * *

1302 Q. You worked at LaLanne a couple of years, you saw
1303 how it changed, didn't you? A. Yes.

Q. You went down from 31 to 25, right? A. Right.

Q. So I mean changing hours is not a shocking thing at Jack LaLanne, is it?

Sometimes employees are unhappy about changes in hours; isn't that right? A. Correct, but it depends when it happens.

Q. I mean you heard Rolinda Antone testify she was very unhappy? A. I guess it depends when it was cut.

Q. But if it is cut at a time when there is a union then of course it is suspicious; you would agree with that? A. Correct.

Q. If you stuck with the union a period of a year any cut you make is going to be suspicious, wouldn't you agree with that?

A. It depends what and how many hours at one time.

* * * * *

1305 PAULETTE ANDERSON

was recalled as a witness and having been previously sworn resumed the stand and testified further as follows:

CONTINUED DIRECT EXAMINATION

Q. (By Mr. Blyer) Mrs. Anderson, would you please identify yourself? A. Paulette Anderson.

JUDGE MALLER: Mrs. Anderson, you previously testified
1306 in this case and I remind you that you are still under oath.

Q. Mrs. Anderson, would you please tell us about a conversation you had with Mrs. Schwartz in mid November of 1973 relating to problems you were having with your car? A. Yes.

MR. MONAT: I object, Your Honor, I don't see the relevance.

JUDGE MALLER: Well, Mrs. Schwartz testified about a conversation. She may testify in rebuttal.

MR. MONAT: I object to it as being leading then.

JUDGE MALLER: It is not leading. It is merely fixing the event and calling it to her attention.

MR. MONAT: Mrs. Schwartz did not testify, as I recall, about a car. That is why I objected as not being rebuttal.

JUDGE MALLER: Well, I don't have the transcript before me.

MR. MONAT: I will withdraw my objection, Your Honor.

JUDGE MALLER: Very well.

Q. Will you please tell us about that conversation? A. Yes. Sometime late in November I called up -- well, first I called Anita Katz. I called the Douglaston Gym and asked to speak to Anita.
1307 Somebody else got on the phone and said and I said "Gabriele," I said, "I might not be able to make it into work tonight. My car broke down." I said, I was waiting around all day long for a tow truck and I said I don't know if I will be able to get there but I will try my best.

I said -- the thing is, I don't like to ask anybody all the way to the Bronx to come to pick me up. So she said, "All right, write everything that you said to me on a piece of paper and sign it and bring it into Anita Katz on Wednesday," and she said you know, she said -- then she just hung up so I said -- I am getting mixed up.

All right, let me start again.

Before I hung up, before we hung up I said, "Why are we doing this? "

And she said to me, she said, "Just do what I said," and then she hung up.

So I got to work that afternoon -- that evening about 5 o'clock because Debbie Caron came into the Bronx and picked me up.

So we walked into the lobby and I started -- I walked in. I signed in and Anita Katz said, "What are you doing here?"

So I said well, I said, "Debbie, you know, came to the Bronx and picked me up."

1308 So then I changed into my uniform, I went to the gym floor and Anita said, "Go into the office, Gabriele wants to talk to you."

So I got into the office and Gabriele said, "What are you doing here? You said you weren't coming in."

She said, "First of all I want to tell you something. I don't give a shit Paulette," and I said to her, "Well, I don't give a shit either Gabriele," so we started a very heated argument and she said to me, "You are trying to make a fool out of me by coming to work."

She said, "After you told me you weren't going to be here."

So I said, I didn't tell you I wasn't going to be here. I said I was going to try my best to get here.

So she said to me, "Well, you should have called." So I said, "Well, you didn't give me a chance, you hung up the phone before, you know, I told you that, before I could tell you I was definitely going to try to make it in."

So then she said to me, she said -- well, she said -- I said, "First of all, if you want to know the real reason why I made such an effort even if it was an inconvenience, you said in that telephone conversation, you had mentioned about this new thing, about signing a piece of paper."

So then she said well, I can't -- you know -- I can't talk about
1309 the telephone conversation with you.

So at that point I said, "What do you mean?"

She said, "I'm not allowed to talk about the testimony," so I said, "I'm not referring to the testimony, I'm referring to the phone conversation I had with you in which you had -- you know, just this afternoon told me I had to sign a piece of paper."

She said, "Well, that is a new policy."

I said, "Well, you really didn't make that clear to me," and I said, "Really, I didn't know what was going on."

So then she said to me well, she said -- this is that, that was the end of it. She said, "This is what we are doing now," and she said, "I wish you hadn't come in to work because I am paying a girl $15 to come over here by a cab," and I said to her, "Well, if you want me to I will ask Debbie if I can use her car and I will go over to Lefrak City and work in the girl's place."

So she said to me it is not necessary, you just stay here tonight and that is what happened.

Q. You made a reference to something about testimony. What were you referring to? A. Well, on November 5th, I testified about Gabriele had called my house around June and I testified --

Q. Don't go into the details.

MR. MONAT: I think the testimony is put in as an exhibit by yourself, Mr. Blyer.

1310 MR. BLYER: I just wanted her to testify what she thought Mrs. Schwartz was talking about, that is all.

MR. MONAT: I move to strike that as irrelevant.

JUDGE MALLER: Overruled.

Q. Just tell us, did you finish your answer? A. Yes, the testimony was in reference to a telephone conversation I had had with Gabriele sometime in June.

Q. That was the subject of your testimony? A. Right.

Q. And on November 5th? A. Right.

MR. BLYER: Thank you, I have nothing further.

MR. MONAT: May I have the last answer read back? It may have been two questions and two answers, to make it complete. May I have it read back?

JUDGE MALLER: Certainly.

(Whereupon the pertinent portion of the record was read by the reporter.)

CROSS EXAMINATION

Q. (By Mr. Monat) Ms. Anderson, you did not put the story about Gabriele Schwartz in November in your affidavit, did you? A. No, I did not.

Q. Prior to this past Wednesday, prior to Wednesday which

1311 was the second day this week of the hearing? A. Right.

Q. You had been at all the hearing days before that? A. Yes.

Q. In addition I imagine you spent a substantial amount of time with Mr. Blyer preparing for this case. A. During the time at the hearing?

Q. No, outside the actual hearing hours. A. Not during the two weeks that this was adjourned.

Q. I understand that, but in total before the hearing even started back in July didn't you spend sometime with Mr. Blyer preparing for the hearing? A. I met with him on the day of the prehearing. That is the first time I met with him, and then he came to my brother's house to go over my testimony with me just about three days, four days before the hearing and that was the only preparation I had with him.

Q. What was that about, half a day or a day? A. No, a couple of hours at my brother's house before I went to work one day.

Q. Of course you had various phone conversations with Mr. Rosen and perhaps with Mr. Blyer where you added your information to your original affidavit? A. Yes, I did, right.

Q. Did you ever give that information about this telephone
1312 call? A. I believe the first time I ever -- I don't remember anything about Mr. Rosen but I believe the first time I told Mr. Blyer this was out at my brother's apartment and I just mentioned it to him.

I didn't sign any affidavit, he didn't write anything down. I told it to him.

Q. From the way you tell the story I take it you must have thought this was harassment for the union because of what you did and all? A. Well, that is why I brought it up to Mr. Blyer but he felt, you know, it really wasn't in line with what we were charging.

Q. You never gave any affidavit on that story? A. No.

Q. Now, you knew that Mrs. Schwartz was upset that you had come when she made arrangements to get someone to come? A. After she told me right, yes.

Q. Wasn't that basically why she was upset as far as you could tell? A. I wasn't sure that that is really why she was upset.

Q. Knowing her, I mean you know her from work I assume to some extent? A. To some extent.

Q. Doesn't she get upset about those kinds of things?

1313 A. Well, I never had that happen before where a girl was sent in in my place.

Q. But from your observations something happened with someone? A. I would think maybe she would be. Never happened before to me.

Q. But I mean from your experience, even knowing what went on with other people? A. Yes, I guess she would be angry if that is what you mean.

Q. And I take it from what you tell, you were angry too at this conversation? A. Yes.

Q. So it was a matter of mutual anger you might say? A. Right.

* * * * *

1314 Q. What had you said before, before she said to you she can't talk about the testimony? A. All right. What I said is the reason why I made such an effort to come into work that day even though it meant Debbie Caron had to drive into the Bronx to pick me up is because of the telephone conversation I had had with her earlier that day, just a couple of hours, maybe an hour and a half before.

So she said, "I can't talk about that telephone conversation,

1315 I can't talk to you about anything concerning the testimony."

So I said, "I'm not referring to that telephone conversation."

Q. Just a moment. Does that make sense to you?

A. Yes. Gabriele and I had had a telephone conversation in June and I testified about that telephone conversation. So during this conversation -- if you are confused I will go slower.

JUDGE MALLER: Go ahead, please.

A. (Continuing) Okay. So during this conversation she said to me, she said -- well, I said to her, I said, "If you want to know the real reason I came into work today," I said, "It is because of the telephone conversation that we had."

So she said, "I can't talk to you about that telephone conversation," and she said, "And I can't talk to you about anything having to do with the testimony."

So I said to her, "Well, I'm not referring to that telephone conversation," meaning the one on June 5th or June, whatever, June something or other. I don't remember when it was.

And so she said, and so then I said to her, I'm referring to the one we had today, where you told me I had to sign a piece of paper and bring it into Anita Katz.

1316 I said that is what I am referring to and if I'm there, I went on, I said why do I have to sign something, and that never had to be done before.

She said this is a new policy and I said well, you didn't explain that to me on the phone and you know, I said that is why I made such an effort to get in here tonight because I felt that this, writing this all down and everything to bring it in to Anita Katz must have some sort of significance.

I was afraid not to come in that night, I didn't want to have to sign anything and bring it to Anita.

Q. You were afraid if you didn't come in that night something might happen to you? A. Right. I didn't understand why I had to start anything like that.

Q. That there might even be termination? A. Either that or maybe that I was afraid it was going to go into a record or something and be kept on file because I didn't know.

Q. You would not have beensurprised that the company would have fired you for not coming in? A. I would have been surprised.

Q. You would not have been surprised? A. I didn't know what to think about that. I just was suspicious about having to sign
1317 a piece of paper and bringing it in when in all the three years I worked there I never had to do this before.

JUDGE MALLER: Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

MR. MONAT: I have no further questions.

JUDGE MALLER: Any redirect?

MR. BLYER: No, I have nothing.

JUDGE MALLER: Thank you, Ms. Anderson, you are excused. Any further rebuttal?

MR. BLYER: No, Your Honor.

MR. MONAT: I would like to call Ms. Arnott.

Whereupon,

DEE ARNOTT

having been previously sworn, resumed the stand and testified further as follows:

CONTINUED DIRECT EXAMINATION

Q. (By Mr. Monat) Ms. Arnott, you previously testified in this case? A. Yes.

Q. You understand that you are still under oath here? A. Yes.

Q. Were you present today when Mrs Rolinda Antone
1318 testified? A. Yes, I was.

Q. Did you hear her testimony about a conversation on July 29, 1974? A. Yes.

Q. Do you recall there was a conversation with her? A. Yes, I do.

Q. Do you think she is right on the date? A. I couldn't be positive.

Q. Do you recall a conversation? A. Yes.

Q. Where was the conversation? A. In the main gym.

Q. Who was there? A. Myself, Rolinda and I think Wendy Lord was standing right near the desk.

Q. Do you think she overheard the conversation or not? A. I really don't know.

Q. She was standing there? A. As I recall she was standing right nearby the workout cards.

Q. What was said? A. Rolinda had come into the gym and we were standing near the desk and I had asked her what had happened at the court hearings because I was curious about it. I didn't know
1319 too much about it and, let's see -- she turned around and told me a little bit about what was going on.

I had said, "Gee, that is a shame Paulette had to go through this," because she was a nice kid and she never did anything wrong to me.

Q. Anything else that you can recall? A. Oh, I said to her if I was ever called as a witness I really wouldn't want to go because I didn't want to get myself involved and testify.

Q. Did you hear Rolinda Antone testify that you in effect agreed that Anita Katz had said that Debbie Caron and Paulette Anderson should be given additional cleaning duties one night and they were trying to get rid of them and something to that effect? A. I heard Mrs. Antone say that and --

Q. On the stand today? A. Yes.

Q. Did you say words to her, those words to her? A. No, I did not, because --

Q. Did you say any words to this effect? A. No, because I already testified that it never happened.

Q. I want you to understand something. I don't want you to think about your testimony the other day. I want to know if you ever

1320 said these things to her. A. No.

Q. Do you recall a conversation she said was on August 5th which I believe was a Monday where she said she had mentioned the words she was quitting? A. Yes.

* * * * *

1321 A. I walked back into the gym from giving a calisthenics class and Rolinda turned around and said, "Dee. I'm quitting."

I said, "Are you serious?"

And she goes, "Yes, this time I am."

And I asked her why and she goes because there are not enough hours, and I asked her to work from 5 to 9 and she couldn't because she had a babysitting problem.

She said, "Why don't I have my old hours back from 6 to 10 and at the Little Neck gym it is very slow there.

Q. Just tell us what you said. A. Yes, I'm explaining what I said.

From 9 to 10 basically only cleaning is done and I have three girls plus myself doing the cleaning. I really didn't a fourth and I explained that to her.

Q. Then what happened? A. That was it.

Q. Did you get the impression she was joking? A. Not at all because I had asked her if she was serious and she said yes.

Q. Was there any mention in this conversation of anything with respect to the hearing or the testimony at this conversation? A. No.

Q. Just one more question, you realize you have been
1322 under oath here? A. Yes.

Q. And you have told the truth to the best of your memory? A. Yes.

* * * * *

1325 REDIRECT EXAMINATION

Q. (By Mr. Monat) Ms. Arnott, did you tell anyone at any time that Rolinda had quit? A. Yes.

Q. Who did you tell? A. Anita Katz.

Q. When did you tell her? A. On Wednesday morning.

Q. When did the thing with Rolinda happen on August 5th, the Monday, what time was it? A. That was later on in the evening.

Q. Do you know if anyone did prepare any papers? A. Yes.

Q. Who? A I imagine it was the office.

Q. Do you know if any arrangements were made to have anyone come to Little Neck to cover for Rolinda Antone that night on Wednesday? A. Arrangements were made, yes.

Q. Do you know who came? Did anyone come? A. Yes.

Q. Who? A. Yona Kelman.

1326 Q. From where, do you know where she came from? A. Right now she is working sometimes in the Executive Club, sometimes in the Biltmore.

Q. But at that time, on this Wednesday did she come out from one of these clubs to work? A. I'm not sure it was the Executive.

Q In any event Yona Kelman was not an employee at Little Neck? A. No.

Q. Do you know was Yona Kelman there when Rolinda came to work? Was she already there when Rolinda came on Wednesday? A. Yes, she was.

Q. What happened when Rolinda first came in on Wednesday? Did you see her or was it somebody else? A. Well, I was on my dinner break at the time and Anita Katz came into the health bar where I was sitting and called me into the lobby, into the office where her and Rolinda had been sitting.

That is the first time I saw Rolinda coming in. I was quite surprised just to see her there.

Q. Then what happened? A. We proceeded to talk about the events that occurred on that Monday night between Anita, myself and Rolinda, and it was basically me, myself and Rolinda talking.

1327 Then Anita walked out, she received a phone call and they paged her and I remained in the office with Rolinda and Anita came back and said, "Dee, you have a phone call," and I went out and that was it.

Anita said for Rolinda to remain in the office, she would be right back to explain to her.

* * * * *

1330 Hearing Room C,
National Labor Relations Board,
16 Court Street,
Brooklyn, New York,
Monday, August 19, 1974.

* * * * *

1332 MR. MONAT: Your Honor, I've consulted with General Counsel and I think we can reach a few stipulations and expedite the close of the hearing.

One, I believe General Counsel will stipulate that Anita Katz did not work on December 30th, 1973. That's a Sunday.

MR. BLYER: I'll stipulate that is a fact, although I'm not sure of the relevance.

JUDGE MALLER: Let me note that. Didn't work when?

MR. MONAT: December 30th, 1973, Sunday.

JUDGE MALLER: Very well, stipulation is noted.

MR. MONAT: The second stipulation is that on November 5th, 1973, in Case No. 29-CA-3437, in addition to Debbie Caron, Richard Kaufman and Paulette Anderson having testified as witnesses for the said General Counsel, Cecelia Ann Averritt --

JUDGE MALLER: Who?

MR. MONAT: Cecelia Ann Averritt.

MR. BLYER: Why don't you give the job title?

MR. SCHWARTZ: Receptionist.

MR. MONAT: Receptionist -- Teresa Ann Ragsdale --

MR. SCHWARTZ: Instructress.

1333 MR. MONAT: -- instructress, Robert Cash, instructor, Alicia Grasso, instructress, all of whom were at one time employees at the Little Neck Bar, also testified as witnesses for the General Counsel.

JUDGE MALLER: Is the stipulation accepted by you?

MR. BLYER: Yes, Your Honor.

JUDGE MALLER: Very well, the stipulation is accepted.

MR. BLYER: I would just like to add to that stipulation that none of these people are presently employed with Jack LaLanne at any location, is that correct?

MR. MONAT: Yes.

JUDGE MALLER: Do you so stipulate?

MR. MONAT: Yes.

JUDGE MALLER: Very well, the stipulation is so amended and received.

Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

MR. MONAT: I think another stipulation we've agreed to is that, without General Counsel conceding relevance, necessarily, is that there were no objections filed by the Union to the December 12th and 13th election.

MR. BLYER: I'll stipulate to that.

JUDGE MALLER: The stipulation is noted.

MR. MONAT: I suppose I ought to make this now an

1334 exhibit and I understand it's without objection on the part of General Counsel to its receipt and that would be from the transcript of a hearing held --

JUDGE MALLER: You are offering this as an exhibit?

MR. MONAT: Yes.

JUDGE MALLER: Your next exhibit is R23 which was not used before. We started to use it but didn't.

MR. MONAT: R23?

JUDGE MALLER: The transcript of what date?

MR. MONAT: Transcript of July 25th, 1973, in Case No. 29-RC-2300, pages 843 to 845.

JUDGE MALLER: You are offering it at this time?

MR. MONAT: Yes, Your Honor.

JUDGE MALLER: Is there any objection?

MR. BLYER: No, Your Honor.

JUDGE MALLER: Being no objection, Respondent's 23 -- you are not offering the whole thing?

MR. MONAT: No, just those three pages.

JUDGE MALLER: Just the three pages?

MR. MONAT: That is the testimony of Mr. Kaufman, part of it.

JUDGE MALLER: Respondent's 23 is received in evidence.

(Respondent's Exhibit 23 was marked for identification and received in evidence.)

* * * * *

1335 MR. MONAT: And one more stipulation, I believe, would be that for the week ending February 22nd, 1974, Debbie still went from 29 and a half to 10.

1336 JUDGE MALLER: Is it so stipulated, Mr. Blyer?

MR. BLYER: Yes, Your Honor.

JUDGE MALLER: Very well, the stipulation is noted.

MR. MONAT: Your Honor, with respect to the record that has gone before in this case, I have no objection even to a reference in the brief, except it may require some explanation if they're referred to. Otherwise, I would certainly stipulate to any pages that Mr. Blyer wants subsequent to this hearing.

MR. BLYER: If you want to wait a few minutes, I can locate it, I think.

JUDGE MALLER: All right, and we'll close it up.

Off the record.

(Discussion off the record.)

JUDGE MALLER: On the record.

MR. BLYER: Your Honor, I offer as per stipulation into evidence General Counsel's -- can you help us with the numbers again? Is it 11?

JUDGE MALLER: Your next number is 11.

MR. BLYER: Four pages, pages 50 through 54.

JUDGE MALLER: Of the CA case.

MR. BLYER: Yes, the relevant portion beginning on page 50 with the question, "Did he say anything else?"

JUDGE MALLER: Do you have a line number?

1337 MR. BLYER: Yes, it's 18, and the "he" relates to Andy Bostinto, did he. This is the testimony of Richard Kaufman in Case No. 29-CA-3437.

MR. MONAT: That's through page 54, right?

MR. BLYER: Yes.

MR. MONAT: I'd like to point out that I believe Judge Stevenson discredited Mr. Kaufman's version of that particular meeting with Mr. Bostinto.

JUDGE MALLER: Is this offered for the truth of the matters?

MR. BLYER: No, Your Honor.

JUDGE MALLER: Merely that he testified to that effect?

MR. BLYER: Yes, and it has relevance in regard to Mr. Kaufman's testimony in this proceeding relating to a meeting in, I think, late February, early March, with Mr. Schwartz. I'll make it clear in the brief, really, what the purpose of it is.

MR. MONAT: Your Honor, General Counsel has agreed that as to these four pages, should I find anything in reviewing the old transcript that would modify or place this in some other context, that I can refer to that offer in my brief.

JUDGE MALLER: Any objection to GC 11?

MR. MONAT: No, Your Honor.

JUDGE MALLER: General Counsel's Exhibit 11 is received in evidence.

1338 (General Counsel's Exhibit 11 was marked for identification and received in evidence.)

* * * * *

MR. MONAT: I spoke to Miss Lord on Friday night and I believe I indicated I wanted to talk to them and she indicated that as to the July 29th meeting, she did not recall it.

It may well be that she really wasn't there. She indicated this to me on the telephone, on the quitting incident.

MR. BLYER: August 5th.

MR. MONAT: August 5th. I spoke to Melanie Schwartz and she also wasn't completely clear. She thought it was possible that it was a joking manner it was said in but she didn't hear the whole conversation and she really couldn't make a determination, so, because of those factors, I have called neither witness.

* * * * *

EMPLOYER'S EXHIBIT 9

WEEKLY PAYROLL SCHEDULE

GYM _____ PREPARED BY _____

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE SURNAME, FIRST NAME	NORMAL WEEK'S WORK IN HOURS	RATE PER DAY	SAT	SUN	MON	TUES	WED	THURS	FRI	TOTAL HOURS WORKED	ADJUST SLIPS

WEEKLY PAYROLL, BOILERHOUSE

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE (SURNAME, FIRST NAME)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	ABSENT WEEKS

WEEKLY PAYROLL SCHEDULE

GYM _____ PREPARED BY _____

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE FNAME, FIRST NAME	REGULAR WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	GROSS PAY

PREPARED BY _____

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE (LAST NAME, FIRST NAME)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	ADJUSTMENTS	

PAYROLL SCHEDULE

GYM [illegible] PREPARED BY [illegible]

WEEK ENDED [illegible] APPROVED BY [illegible]

EMPLOYEE (NAME, FIRST NAME)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	ADJUSTMENTS
	38	1.-		12-	10-		10-30		10-4	60	
				4	6		4		5		
	37	1.05		12-3	10-3		10-30		10-30	60	
				4	4		4		4		
	30	.90			10-3		10-30		10-30	60	
					6		4				
		.90		12-3	12-3		12-3		12-3	60	
				4	4		4		4		
		.225		12-3	12-3		12-3	12-3		60	
				4	4		4	4			
		.90			12-3		12-3			60	
					4		4				
		.90			12-3		12-3		12-3	60	
					4		4		4		
		.90			10-3		12-3		10-3	60	
					4		4		4		

WEEKLY PAYROLL SCHEDULE

GYM _____ PREPARED BY _____

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE NAME (PLEASE PRINT)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	AMOUNT EARNED	

M _____ PREPARED BY _____
EEK ENDED _____ APPROVED BY _____

EMPLOYEE (NAME, FIRST NAME)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	ADJUSTMENTS

WEEKLY PAYROLL SCHEDULE

GYM _____ PREPARED BY _____

WEEK ENDED _____ APPROVED BY _____

EMPLOYEE (NAME, FIRST NAME)	NORMAL WORK WEEK IN HOURS	RATE OF PAY	SAT	SUN	MON	TUES	WEDS	THURS	FRI	TOTAL HOURS WORKED	ADJUSTMENTS	

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

JACK LA LANNE MANAGEMENT CORP.,
Respondent.

No. 75-4205

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 27 day of January 1976.

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Subscribed and Sworn to before me this